IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'I' BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President),
and Amarjit Singh (Judicial Member)]

ITA No. 2333/Mum/2018
Assessment year: 2006-07

Renu T Tharani ……..……Appellant
1, Prabhat Building, 28, 'B' Road
Churchgate, Mumbai 400 020 [PAN: AAXPT 4838 Q]

Vs

Dy Commissioner of Income Tax
International Taxation Circle 4(2)(1), Mumbai ……Respondent

Appearances by
Ved Jain and Mukesh Advani *for the appellant*
Avaneesh Tiwari *for the respondent*

Date of concluding the hearing: : January 28,2020
Date of pronouncement : July 16 ,2020

O R D E R

Per Pramod Kumar, VP:

1. This appeal, filed by the assessee, calls into question correctness of order dated 17th January 2018, passed by the learned CIT (Appeals) in the matter of assessment under section 143(3) r.w.s. 147 of the Income Tax Act, 1961, for the assessment year 2006-07.

Issues requiring our adjudication in this appeal:

2. The assessee has raised as many as nineteen grounds of appeal, but, as the learned representatives fairly agree, all that we are required to adjudicate upon, in this appeal, is:

> **(a) whether, on the facts and in the circumstances of this case, learned CIT(A) was justified in upholding the validity of reassessment proceedings,**
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> *and, in the event of our holding this issue against the assessee,*
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> **(b) whether or not the learned CIT(A) was justified in upholding the addition in the hands of the assessee for Rs 196,46,79,146, being an amount equivalent to US $ 3,97,38,122 at the relevant point of time, held by HSBC Private Bank, Geneva, Switzerland, in the name of Tharani Family Trust, of which the assessee was a beneficiary.**

Challenge to validity of reassessment proceedings:

3. Let us first take up the challenge to the validity of reassessment proceedings.

Relevant material facts:

4. So far as this grievance of the assessee is concerned, the relevant material facts are like this. The assessee before us an elderly lady, now in her late eighties. On 29th July 2006, she had filed her income tax return, stating her residential address as 301, Embassy Erose, Ulsoor Road, Bangalore and disclosing a returned income of Rs 1,70,800, in Ward 9(1), Bangalore. This case was, by way of an order dated 20th December 2013 passed under section 127 of the Income Tax Act, centralized with the present Assessing Officer. The income tax return filed by the assessee, in the meantime, was not subjected to any scrutiny at any stage. The assessment thus reached finality as such. On 31st October 2014, however, this assessment was reopened by issuance of notice under section 148. The reasons recorded, for so reopening the assessment, are as follows:

> **Reason for re-opening the assessment**
>
> **The case of THARANI RENU TIKAMDAS was centralized with the undersigned vide order u/s 127 of the IT Act- 1961 bearing No. 45/Centralization/CIT-IV/2013-14 dated 20.12.2013. Information has been received in respect of her from .the office of DIT(Inv.), Bangalore." The information pertains to her having a bank account with HSBC Bank, Geneva bearing a number BUP_SIFIC_PER_ID-5090178411. From the said bank statement, it is seen that she is having a peak balance of USD 39738122 in the said account during the period 2005-06. The records of this office show that this amount has not been considered by her in her return of income and this income therefore has escaped assessment. This evidence has come into the possession of the undersigned; therefore, I have reason to believe that the income to the extent of at least USD 3,97,38,122 has escaped assessment within the. meaning of para (d) to the Explanation 2 below section 147 of the Act.**
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> **In light of this, notice u/s 148 of the Income Tax Act, 1961 is issued.**

5. In response to the notice so issued, it was submitted by the assessee that the income tax return filed by the assessee on 29th July 2006, in Bangalore, be treated as return in response to the notice under section 148. The assessee also demanded the reasons for reopening the assessment, which were eventually furnished to the assessee. The assessee objected to the reopening of assessment, and, inter alia, stated as follows:

> **With reference to above and further to our letter dated!4th November 2014, we would further like to submit that we are in receipt of your order sheet dated 30th October 2014, wherein you have stated that, the Assessee has maintained a bank with HSBC Bank in Geneva bearing account number BUP_SIFC_PER_ID_5090178411. You have also mentioned in the order sheet that she has maintained a peak balance of USD 39738122 in the above said account during the financial year ended 31.03.2006 hence this is the only reason why you have reopened, the-above said assessment.**

To this we would like to submit that the assessee has not maintained any bank account with HSBC Bank in Geneva, hence information you have got is completely erroneous. The assessee is not the owner of the said bank account; hence there is no reason why the above case should be re-opened u/s 148.

Without prejudice to above, we would like to submit that the residential status of the assessee during the above said Assessment year is Non resident as defined in section 6(1) of the Income Tax Act, 1961. We enclose herewith a copy of the passport of the Assessee, wherein the dates of departures & arrivals in India are stated therein.

From the dates of arrivals in India & departures from India, you would be able to see that the Assessee has not stayed hi India for more than 182 days in any of the financial years starting from 1st April 2001 to 31st March 2005. Moreover, the total number of days which he has stayed in India during the previous 4 (four) financial years preceding the financial year ended 31st March 2006 is less than 365 days and finally during the previous year relevant to the above mentioned assessment the assessee has stayed in India for less than 60 -days, hence all the conditions as specified in section 6(1) of the Income Tax Act 1961 has been complied with, wherein it concludes that the Assessee is a Non-Resident.

As per the provisions of section 9(1) of the Income Tax Act 1961, the Non-Resident is chargeable to tax only on income which accrues or arises in India, hence, the income which accrues or arises out of India, the same is not chargeable to tax in the hands of the Assessee. In lieu of the above said facts & circumstances of the case, any income which accrues & arises out of India, which includes the income- deposited in HSBC Bank Geneva is not liable to be taxed in the hands of the Assessee as per the provisions of section 9(1) of the Income Tax Apt 1961.

Finally we would like to submit that the assessee has filed its Return of Income for the above mentioned Assessment Year on 29th July 2006, which was enclosed in our letter dated 14/11/2014 as the returned income was below the threshold limit; hence no tax was liable to be paid.

Thus, as the information received to you is incorrect *(and)* **there is no reason why the case should be re-opened, hence, we request you to kindly drop the re-opening proceedings & oblige.**

6. These objections, however, did not impress the Assessing Officer. He rejected the objections taken by the assessee and proceeded to frame the assessment under section 143(3) r.w.s. 147 of the Income Tax Act, 1961. Aggrieved, assessee carried the matter in appeal before the CIT(A), inter alia, on the ground that the reassessment proceedings were bad in law, but without any success. Learned also, *inter alia*, CIT(A) upheld the validity of reassessment proceedings and declined to interfere in the matter. The assessee is not satisfied and is in further appeal before us.

Submissions of the parties:

7. Shri Ved Jain, learned counsel for the assessee, begun by pointing out that the assessee is admittedly a non-resident assessee, inasmuch as the impugned assessment was framed on the assessee in her residential status as "non-resident", and it was thus not at all required of her to disclose her foreign bank accounts, even if any. Learned counsel submits that unlike in the United States, where global taxation of income of the assessee is on the basis of citizenship, the basis of taxability of income outside India, in India, is on the basis of residential status of the assessee. He takes pains to explain the fundamental principles of taxation of global income in India. In response to a question from the bench, he accepts that all he wants to point out is that unless someone in resident in India, taxability of such a person is confined to income accruing or arising in India, income deemed to accrue or arise in India, income received in India and income deemed to have been received in India. None of these categories, he submits, covers the income, even if any, on account of an unexplained credit outside India. He then points out that since 23rd March 2004, the assessee is regularly residing in the United States of America, and that, post the financial year ended 31st March 2006 onwards, she assessee is a non-resident assessee. In this backdrop, learned counsel's submission is that so far as a non-resident is concerned, it is not required of such an assessee to disclose any bank account outside India or report any income outside India unless it is covered by the specific deeming fiction which is admittedly not the case at present. It is, therefore, contended that any sums credited in the bank account in question cannot be taxed in the hands of the assessee, and, when it cannot be so taxed, the very foundation of the impugned reassessment proceedings ceases to hold good in law. Leaned counsel submits that the reason for formation of belief must have rational connection with or bearing on formation of belief. Rational connection was said to postulate that there must be direct nexus and live link between material coming to the notice of the Assessing Officer and formation of belief that there is some escapement of income which was taxable in the hands of the assessee. That live link, according to the learned counsel, is missing in the facts of this case. Learned counsel then submits that in any event the assessee did not have a bank account with HSBC, Geneva. What is being referred to in the "base note", on the basis of which the assessment is being reopened, is not in respect of the assessee but admittedly GWU Investments Ltd, as has been factually found, and, in any case, it is not even a bank statement but statement of investment. It is contended that the Assessing Officer was clearly in error in assuming that the base note is in respect of a bank account. Learned counsel further submits that the assessee has categorically stated, on an affidavit,, that (a) the assessee never had any bank account with HSBC Private Bank, Geneva; (b) that the assessee has never been signatory to any bank account with HSBC Private Bank, Geneva; (c) that the assessee is neither a director or a shareholder of GWU Investment Limited; and (d) that source of deposits made in Geneva has no source in India. It is reiterated time and again that the assessee is a non-resident, that the alleged income, even if any, cannot be taxed in India in the hands of a non-resident, that the assessee did not have any bank account with HSBC Geneva and that the assessee is not a shareholder or director in GWU Investment Limited which is admittedly settlor of the Tharani Family Trust and which has given all the funds for the same. On the strength of these submissions, it is contended that the reasons for reopening the assessment are not sustainable in law. Learned counsel for the assessee takes us through a large number of judicial precedents in support of his arguments. Our attention is invited to a coordinate bench decision in the case of **DCIT Vs Hemant Mansukhlal Pandya [(2019) 174 ITD 101**

(Mum)] wherein it is inter alia held that where additions were made to income of assessee, who was a non-resident since 25 years, since, no material was brought on record to show that funds were diverted by assessee from India to source deposits found in foreign bank account, impugned additions were unjustified. It is thus contended that the assessee also being a non-resident, such an income in foreign bank deposits, even if that be so, cannot be taxed in the hands of the assessee, and when that be so, the allegation in the reasons recorded for reopening the assessment, even if it is hypothetically assumed to be correct, cannot be legally sustainable basis for reopening the assessment. Learned counsel for the assessee then invites our attention to Hon'ble Gujarat High Court, in the case of **Sunrise Education Trust Vs Income Tax Officer [(2018) 92 taxmann.com 74]**, in support of the proposition that assessment could not be reopened for mere verification in respect of alleged unexplained cash deposits in a bank account. A reference is then also made to Hon'ble Gujarat High Court's judgement in the case of **Krupesh Ghanshyambhai Thakkar Vs DCIT [(2017) 77 taxmann.com 293]** when the assessment is sought to be reopened for deep verification of the claims, such an reopening of assessment cannot be sustained in law. A reference was then made to yet another judgment of the same Hon'ble High Court, in the case of **PCIT Vs Manzil Dinesh Kumar Shah (406 ITR 326)** wherein it has been held that a completed assessment cannot be reopened only for verification of information received by Assessing Officer from VAT Department relating to purchase alleged to have been made by assessee from hawala dealers. It is also pointed out that SLP against this judgment has been dismissed by Hon'ble Supreme Court in the judgment reported as **PCIT Vs Manzil Dinesh Kumar Shah [2019] 101 taxmann.com 259 (SC)**. Learned counsel then invites our attention to the judgment of Hon'ble Rajasthan High Court, in the case of **Mukesh Modi Vs DCIT [(2014) 366 ITR 418 (Raj)],** wherein it is said to have been held that reassessment proceedings only to for his AO's own verification and to clear his doubts cannot be sustained in law. Learned counsel then refers to the decision of a coordinate bench of this Tribunal, in the case of **Sonal Arpit Doshi Vs ITO (ITA No. 366/Ahd/16; order dated 21st October 2015)**, wherein it is held that the reassessment proceedings cannot be initiated merely for verification of certain transactions. Learned counsel then refers to the judgment of Hon'ble jurisdictional High Court, in the case of **Cyrus Kersi Vandervala Vs ITO (WP No. 2551 of 2016; judgment dated 11 January 2017),** wherein it is said to have been held that in the case of a non-resident, the reassessment proceedings cannot be started even for non filing of return merely on the basis of certain assumptions about business connection in India which could lead to income taxable in India. It is thus submitted that on these facts, and in the light of the legal position so well settled, the reassessment proceedings cannot be sustained in law. We are urged to hold these reassessment proceedings as bad in law, and quash the same. Shri Avneesh Tiwari, learned Departmental Representative, submits that it is an open and shut case for reopening of assessment. It is stated that the claim of the assessee being non-resident was made only after the reopening of assessment was initiated. In any case, looking to the huge funds found at the disposal of the assessee abroad, such amounts could not have been earned by the assessee after becoming non-resident, i.e. 23rd March 2004. It is pointed out that the income tax return is filed showing a meagre income of Rs 1,70, 800 and a person of such modest means is, on the basis of credible information available from abroad, is found to be at the disposal of US $ 3,97,38,122. Obviously, this huge income could not have been earned by the assessee in the US, where she was resident, in one year. Learned Departmental Representative then submits that as per the base note, received by the investigation wing, the assessee was holding an account in HSBC Private Bank Geneva, with BUP Code as 5090178411, and this account was created on 28th July 2004, and the assessee was beneficial owner of the said amount. He submits that the unaccounted monies are not deposited in the Swiss Banks in own names, but through a complex web of layering, nominee directors and

trusts or companies, and, therefore, as long as an assessee is a beneficiary of the amounts held in trust by Banks in tax havens, that is a good reason to believe that, unless such amounts are found to be disclosed in assessee accounts or tax returns- which admittedly is the case here, these amounts represent income escaping assessment. Learned Departmental Representative submits that so far as reopening of assessment is concerned, all that is to be seen is whether prima facie there is a reason to believe that some income has escaped assessment, and when one sees a person, with returned income of Rs 1,70,800, being beneficial owner of Rs 196,46,79,146 in a Swiss Bank, there is clearly good reason to believe that income has escaped assessment in the hands of the assessee. Learned Departmental Representative submits that there cannot be any reason for anyone, leave aside an entity of unknown people in a tax haven, leaving such a sum for her as a beneficiary. It is contended that based on the material on record, the Assessing Officer indeed had reasons to believe that the income has escaped assessment. Learned Departmental Representative then takes up these judgments and makes efforts to show how the facts of these cases are materially different from the facts of the case before us. He submits that unless the facts of these judicial precedents are in *pari materia* with the facts of the case before us, the conclusions arrived at in these cases cannot be straightaway applied to the present case. He submits that here is a case in which cogent and specific information has come to be in possession of the Assessing Officer, about the assessee being linked with Swiss Bank account holding huge balance, and the material on record does not indicate means of the assessee to justify such huge investments, and it is for this reason that the assessment has been reopened. The bank account remains undisclosed to the income tax authorities, and the amounts so placed therein have not been considered in the return of income filed by the assessee. It is for these reasons that learned Departmental Representative contends that the reopening of assessment is perfectly justified in law and on the facts of this case. Learned Departmental Representative also vehemently relies upon the orders of the authorities below, and justifies the same. In a brief rejoinder, learned counsel for the assessee reiterates his submissions, and submits that his basic points remains unanswered in the sense that the Assessing Officer himself has framed the assessment in the status of the assessee as "non-resident" and when there is no requirement requiring a "non-resident" assessee to disclose his bank account or income abroad, how can the assessment be reopened on the ground that the assessee failed to disclose the bank account or the assessee did not consider the said foreign bank account in the income tax return. He submits that when an assessee is a "non-resident" it cannot be for the Assessing Officer to examine income of such an assessee outside India or bank accounts held by such an assessee outside. He submits that the Assessing Officer was clearly travelling much beyond the call of, or the scope of, his duty in going into that aspect of the matter. The very foundation of the reassessment proceedings, according to the learned counsel, is vitiated in law, and, for this short reason alone, he must succeed. Once again a reference is made to the judicial precedents, which according to the learned counsel, have not been specifically dealt with beyond too general a line of arguments. It is again pointed out that the assessee did not have any bank account in HSBC Private Bank, Geneva, and that this account was operated by some GWU Investments Ltd which is neither owned by the assessee nor the assessee is a shareholder in the said company. The existence of this account, therefore, cannot be a good ground for reopening of the assessment of the assessee before us. He submits that it is not even a bank statement, but a statement of investment, which is referred to in the base note. The reasons for reopening the assessment are thus factually incorrect too. Whichever way we look at it, it is submitted, the initiation of reassessment proceedings are unsustainable in law. We are thus once again urged to quash the reassessment proceedings.

Our analysis:

8. As we have given our careful consideration to the rival contentions and the material on record in the light of applicable legal position, we have also taken of the factual matrix of this case. Here is an assessee who files her return of income, disclosing a meagre income of Rs 1,70,800, giving a Bangalore address and files the income tax return a ward which was meant for resident assessees. Going by the facts placed by the assessee on record, which are also set out in the paper-book, the Bangalore property was sold in the year ended March 2003, but yet income tax return continued to be filed at that address. It is not clear as to what was the basis of filing the income tax return at Bangalore but then let's leave it at that for the time being. The income tax return filed by the assessee, a copy of which is placed before us at page 62 of assessee's paper-book, does not at all tick the status as "non-resident", but there is a clearly visible mark in the status as "resident". On these facts, the Assessing Officer, to whom this case was transferred as a result of order under section 127, notices that the assessee has a bank account, as per information in his possession, with HSBC Private Bank Geneva, bearing a number **BUP_SIFIC_PER_ID- 5090178411** with a peak credit, during the relevant period, of a sum of more than US $3.97 crores equivalent to around Rs 200 crores at that point of time. The base note, a copy of which is placed at pages 3 to 12 of assessee's paper-book, clearly shows "**Tharani Renu Tikamdas**" as "**beneficial owner/ beneficiary**" of this account, that her date and place of birth are10th May 1934 and Hyderabad (Pakistan) respectively, and that the account was opened on 28th July 2004. This note also shows, under the heading "*personnes liees aux profile client*" (which as simple google translation would show as meaning "people linked to customer profile"), GWU Investments Limited as with "power of administration". The overall "*patrimoine max constaté sur la period*" (which as simple google translation would show as meaning "max wealth observed during the period") on 02/2007 as US $ 5,62,47,590, but then that aspect of the matter is not relevant for this year. Suffice to note that the residential status of the assessee as shown in the income tax return was "resident", and definitely not "non-resident", that the peak credit at her disposal in this Swiss Bank account was over 11,500 times of her annual income, and that the assessee had admittedly not taken into account this account in her return of income. The claim of the assessee regarding her having a non-resident status in the relevant previous year came much after the reasons recorded, and, quite contrary to this claim, as our perusal of records shows, the assessee herself had claimed the residential status as "resident" in the income tax return. The Assessing Officer has to record his satisfaction about income escaping assessment as on the basis of material in his possession and on record as on the time of recording the reasons for reopening the assessment. A subsequent claim, which was not on record at the time of the reasons being recorded, cannot affect the correctness of these reasons, even though once this claim is made in the assessment proceedings, it will have to be examined on merits and it will have to be adjudicated as such in the outcome of the assessment proceedings. Nothing, therefore, turns on the facts not on record before the Assessing Officer as on the stage of recording the reasons of reopening the assessment. In any case, when the assessee herself is making an incorrect claim in the income tax return, she cannot claim that because the Assessing Officer believed the claim so made, and took initial steps on that basis, the Assessing Officer was in error in taking that path. Of course, all this does not affect the question of determination of her residential status on merits, but that is not the question as on now. The question is whether the Assessing Officer had reasons to believe income escaping the assessment, or not. It is also important to bear in mind the fact that at the stage of issuance of notice, the Assessing Officer is to only form a *prima facie* view. Explaining this principle, Hon'ble jurisdictional High Court, in the case of

Multi Commodity Exchange of India Ltd Vs DCIT [(2018) 91 taxmann.com 265 (Bom)] *[SLP dismissed as reported in (2019) 101 taxmann.com 13 (SC)]*, has observed that "**We find that the power of the Assessing Officer to reopen an assessment under Section 147/148 of the Act on the basis of reasonable belief is not fettled or circumscribed, to be formed only on material found during a tax audit or with material found during examining a case of tax evasion. In fact the basis of fresh tangible material is unqualified i.e. the source of the material could be from any place, however, the only pre-condition is that on the basis of the material so found/obtained by the Assessing Officer, he himself must form a reasonable belief that income chargeable to tax has escaped assessment before issuing a notice for reopening. In fact the Apex Court has observed in Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316/291 ITR 500 has observed that if the Assessing Officer for whatever reasons (material) has reason to believe that income chargeable to tax has escaped assessment then jurisdiction is conferred upon the Assessing Officer to reopen the assessment**". As held by Hon'ble jurisdictional High Court, in the case of **Multiscreen Media Pvt Ltd Vs CIT [(2010) 324 ITR 54 (Bom)]**, "**the expression "reason to believe" must obviously be that of a prudent person and it is on the basis of the reasons recorded by the Assessing Officer that the question as to whether there was a reason to believe that income has escaped assessment, has to be determined. At the same time, the sufficiency of the reasons for reopening an assessment does not fall for determination, at the stage of a reopening of assessment**". In the light of this legal position, in our considered view, based on the facts above i.e. credible information about existence of her account with HSBC Private Bank Geneva with a peak credit of around Rs 200 crores in the relevant financial year- which is far disproportionate to her reported annual income and which is not taken into account in her return of income, the Assessing Officer was perfectly justified in holding the view that the income has escaped assessment.

9. As regards the judicial precedents cited at the bar, all these cases deal with the situation in which the assessee was stated to be non-resident or when the reassessment was done only for verification of some information. That's not the case here. The income tax return filed by the assessee, which was available at the time of recording the reasons for reopening the assessment, did not show the status of non-resident. The recording of reasons cannot thus be faulted. Whatever claim is made subsequently is required to be dealt with in the subsequent proceeding but it will not vitiate the validity of reasons recorded for reopening the assessment. The facts of the decision cited on the line of reasoning that cases of non-residents cannot be reopened on the basis of existence of foreign bank account, in any event, are not in *pari materia* inasmuch as in none of these cases the assessee had filed the income tax return in the status of resident. As regards the decisions that reopening cannot be done for mere verifications, the present case is not a case which some general and vague information is received about the assessee, which may or may not lead to an income escaping assessment in the hands of the assessee, and which is thus required to be examined on merits, but of a very specific cogent information regarding a bank account, with complete details that is good enough for holding at least the *prima facie* view that income has escaped in the assessment in the hands of the assessee. The peak balance in the account, which has subsequently come to the knowledge of the Assessing Officer and on the basis of which reopening is done, is tens of thousand times more than annual income of the assessee.

10. We have also noted that the assessee had shifted to the United States only just seven days before the beginning of the relevant previous year, and it will be too unrealistic an assumption that within these seven days plus the relevant financial year what the assessee

could have earned this huge amount of around Rs 200 crores, which, at the rate at which she did earn in India in the last year, would have taken her more than 11,500 years to earn. Even if one goes by the basis, though the material on record at the time of recording reasons did not at all indicate so, that the assessee was a non-resident in this assessment year, which is, going by the specific submissions of the assessee, was admittedly first year of her "non-resident" status, it was wholly unrealistic to assume that the money at her disposal in the Swiss Bank account reflected income earned outside India in such a short period of one year. Viewed thus, whether the assessee was a resident in India in this year or not, the Assessing Officer would have been perfectly justified in holding the "prima facie" view that, *de-hors* her new acquired non resident status, the peak amount of US $ 3,97,38,122 "not being considered in her income tax return" shows that "income has escaped assessment" in the hands of the assessee. Be that as it may, since the assessee did not disclose the status of "non-resident" in the income tax return filed by the assessee anyway, and the reasons recorded for reopening the assessment can only be on the basis of material on record or the information coming in the possession of the Assessing Officer- which indicated that the assessee was a "resident" in the relevant previous year, this aspect of the matter is wholly the sole and decisive factor leading to our conclusion about correctness of the reasons recorded for reopening the assessment.

Our conclusions on validity of reassessment proceedings:

11. In the light of the detailed reasons analyzed in the foregoing discussions, as also bearing in mind entirety of the case, in our considered view, the correctness of reopening of assessment, on the facts of this case and in the light of settled legal position, cannot be faulted with. We confirm the action of the authorities below on this point and decline to interfere in the matter.

Challenge to addition of Rs 196.46 crores to the returned income

12. We now turn to the question as to whether or not the learned CIT(A) was justified in upholding the addition in the hands of the assessee for Rs 196,46,79,146, being an amount equivalent to US $ 3,97,38,122 at the relevant point of time, held by HSBC Private Bank, Geneva, Switzerland, in the name of Tharani Family Trust, of which the assessee was a beneficiary.

The relevant material facts:

13. To adjudicate on this question, facts of the case, in detail, need to be taken note of. The assessee before us is an individual. The assessee had filed her income tax return, on 29th July 2006, disclosing an income of Rs 1,70,800 for the relevant previous year, but subsequently the investigation wing of the income tax department, as noted in the earlier part of this order, received information that the assessee is having a bank account with HSBC Private Bank (Suisse) SA Geneva. Based on this information, a copy of which is placed before us at pages 3 to 12 of the assessee's paper-book, this case was reopened for fresh assessment on 30th October 2014. When the assessee was confronted with the information so received by the Assessing Officer, the assessee's representative, vide letter dated 9th January 2015 (wrongly stated to be letter dated 9th January 2014 in the paper-book; copy placed at pages 37 onwards in the assessee's paper-book), wrote to the Assessing Officer that

"**enclosed please find herewith a letter dated 14th November 2015 and 5th September 2011, which confirms that Mrs Renu Tharani has neither been an account holder of HSBC nor a beneficial owner of any assets deposited in account with HSBC Private Bank (Suisse) SA, Switzerland, during the last 10 years**". It was further stated that HSBC Private Bank (Suisse) SA has also "**confirmed that GWU Investments Ltd was holder of the account number 1414771, and, according to their records, GWU Investments Limited used to be an underlying company of Tharani Family Trust for which Mrs Renu Tharani was a discretionary beneficiary**" and that "**(t)he Tharani Family Trust was terminated and none of the assets deposited with them were distributed to Mrs Renu Tharani**". It was further stated that "**with this letter, as an evidence, it is now very clear that Mrs Renu Tharani does not hold any account with HSBC Private Bank (Suisse) SA, either in Geneva or any other place in Switzerland, hence the base note issued by you is inaccurate as she does not have any account with HSBC Bank Geneva bearing number BUP_SIFIC_PER_ID_5090178411 or any other number**". Copies of HSBC Private Bank (Suisse) SA's letters dated 5th January 2015 from to one Mr Mahesh Tharani in China, and dated 5th September 2011, copies of which were also placed on record at pages 39 and 40 of assessee's paper-book, were also furnished to the Assessing Officer. In a subsequent communication dated 16th February 2015- a copy of which is placed before us at paper-book pages 41 onwards, the Assessing Officer was further, *inter alia*, informed as follows:

> **In the letter dated 5th January (2015) received from HSBC Private Bank (Suisse) SA in Zurich also confirms the fact that account number 1414771 which is started in your base note belongs to GWU Investments Ltd, having its address at Avalon Management Limited, Landmark Square, 1st floor, Earth Close 64, West Bet Beach South, Grand Cayman, (PO Box No 715, KY1-1107), and it does not belong to Mrs Renu Tikamdas Tharani. The bank further clarifies that as per their records GWU Investments Ltd used to be an underlying company of Tharani Family Trusts for Mrs Renu Tharani was a discretionary beneficiary**
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> **The HSBC Bank in Geneva may have asked GWU Investments Ltd the proof of identity as well as proof of address of all the beneficiaries. The company may have provided my passport as proof of her identity and proof of address. As the address mentioned in the passport is that of Mumbai, hence the base note showed the account of GWU Investments Ltd along-with my Mumbai address.**
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> **As the address does not maintain any bank account with HSBC Private Bank (Suisse) SA in Switzerland, the question of explaining any source of deposit does not arise. Without prejudice to above, the HSBC Private Bank (Suisse) SA also confirms the fact, in their letter dated 5th January 2015, that according to their best of knowledge, Tharani Family Trust (GWU Investments Limited) has been terminated and none of the assets deposited with HSC Bank Private Bank (Suisse) SA were distributed to Mrs Renu Tharani**

14. A copy of the assessee affidavit dated 12th February 2015 and notarized at China, was also filed before the Assessing Officer. A copy of this affidavit was also placed before us at pages 44 and 45 of the paper-book, and this affidavit stated as follows:

> **I, Mrs Renu Tikamdas Tharani aged 81 years, residing in 6, Country Club lane, Florham Park, New Jersey 07932, do solemnly affirm as under;-**

1) I am an Indian Citizen till date & I holding an Indian Passport number ZI871970. At present the address mentioned in my Indian passport is 1 Prabhat building, ground floor, 'B" Road, Church Gate, Mumbai 400020,

2) I have a Permanent Account Number AAXPT4838Q.

3) I am a Permanent Resident of United States of America Since 23rd March, .2004. I neither have nor ever had any business connections in India nor was I doing any business when I was staying in India.

4) I have already submitted you a copy of my Passport from 24th May, 2001 onwards till date which proves the fact that I am a Non-Resident during the financial year ended 31/03/2006 & thereafter

5) A Letter from "HSBC Private" Bank (Suisse) SA dated 5th January 2015 confirms the fact that no payment was made to me either as a beneficiary or as a beneficial owner by GWU Investments Limited who has its registered office at: address: C/o Avalon Management, Limited, Landmark Square 1st floor, Earth close 64, West pat Beach South, Grand Cayman, P.O.Box 715, KY1-1107, Cayman Islands (CYM).

6) I have received a notice under section 148 of the Income Tax Act 1961 dated 3151 October, 2014 for the Assessment Year 2006-2007 as well as for Assessment Year 2007-2008 under the pretext that I maintain a bank account with HSBC Bank in Geneva Switzerland bearing number BLIP_SIFIC_PER_ID_5090178411 & that I have maintained a peak balance of USD $ 3,97,38,122/- during the financial year relevant to the Assessment Year 2006-2007 & a peak balance of USD $ 23,55,851.60 during the financial year relevant to Assessment year 2007-2008.

To this, I solemnly affirm under oath that I do not maintain nor I had any account with HSBC in Geneva in my name, hence the question of being the owner of the above said funds does not arise. A certificate from HSBC Private Bank (Suisse) SA dated 05th January 2015 & 5th September, 2011 confirms the fact that I do not have or maintain any bank account in HSBC Geneva hence the question of mentioning you the source of deposits in HSBC Geneva does not arise.

7) Subsequently I received a base note from the Deputy Director of Income Tax (International Taxation) -1 (1), Room No. 117, Scindia House, Ballard Estate, N. M. Road, Mumbai-400 038 which is neither signed or sealed by the Income Tax Department alleging that the account number BLIP_SIFIC_PER_ID_5090178411 is in the name of GWU INVESTMENTS LTD wherein it is said that I am the beneficial owner or the beneficiary. To this I would like to solemnly affirm that I have not received any amount from the above said company, either as a beneficiary or as a beneficial owner.

8) The bank account stated in the base note belongs to GWU Investments Ltd and does not belong to me. The HSBC Bank in Geneva may have asked from the GWU Investments Ltd the proof of identity & proof of address of all the potential beneficiary's & beneficial owners. The company might have provided my passport as a proof of identity & proof of address. As the address mentioned

in my Indian passport is that of Mumbai hence the base note states the same address.

9) I personally had a residential property in Bangalore which was sold by, me during the financial year ended 31.3.2003. The sale proceeds of this property were deposited into my account with Syndicate Bank in Bangalore. The question of depositing the Sale proceeds of any asset in HSBC Geneva Account does not arise.

15. It was, vide letter dated 25th February 2015, contended that the assessee has duly discharged the onus "**by getting a clarification from the HSBC Private Bank (Suisse) SA that GWU Investments Ltd is an underlying company of Tharani Family Trust and she is only a discretionary beneficiary**". A reference was then made to Hon'ble Supreme Court's judgment in the case of **Commissioner of Wealth Tax, Rajkot v. Estate of HMM Vikramsinhji of Gonda (2014) 45 taxmann.com 552 (SC)** in support of the proposition that in the case of beneficiary of a discretionary trust, income can only be taxed when the income is actually received, but then in the present case, the assessee has not received any money in the capacity of beneficiary. It was submitted that "in the light of the above said facts, there is no reason as to why you should insist in asking the assessee to provide you the details of the account standing in the name of GWU Investments Ltd, as she is in no position to provide you the details for the reasons mentioned in the above para".

16. None of these submissions, however, impressed the Assessing Officer. He rejected the submissions made by the assessee, and proceeded to make an addition of Rs Rs 196,46,79,146, being an amount equivalent to US $ 3,97,38,122 at the relevant point of time, by observing as follows:

12. The submission of the assessee are considered. The assessee has not provided the bank account statement in which she is the discretionary beneficiary nor has explained the sources of deposits made in the said amount. This is not acceptable because of the following reasons:

(a) The assessee is a discretionary beneficiary of the account held by the Tharani family Trust in HSBC, Geneva in the name of GWU Investments. She is a senior member of the family (Date of Birth 10.5.1934). It is surprising that she does not know about the settler of the Trust as well as the sources of deposits made in the HSBC account. No bank account statement has been provided nor the source of deposits made in the account explained by the assessee even after specific queries were raised on this.

(b) It is also surprising that as a beneficiary she did not receive any assets when the Tharani Family Trust was terminated and if that be so, then where all the money went after termination of the Tharani Family Trust is open to question and the same remains unexplained.

(c) The assessee has an address in India. As per the base note, the address is 1Prabhat, 28B RD Churchgate, Mumbai - 400 020 which is recorded as her legal address. Further, during the years under assessment, she was filing her return of income with ITO, Ward 9(1), Bangalore in which her

address is NO. 7, Embassy Erose, Ulsoor Road, Bangalore, Karnataka' and '38/2, Berlie Street, Langford Road, Bangalore. Even though the returned income were not substantial, these facts show that she is having her interests in India.

(d) Having interests and assets in India and not producing the details of an account that she ought to know creates a circumstance in which she is holding back the information that is prejudicial to her interests.

13. The assessee relied on the decision of the Hon'ble Supreme Court in the case of Commissioner of Wealth Tax Rajkot Vs. Estate of Late HMM Vikramsinhji of Gondal (Civil Appeal 2312 of 2007). However it must be understood that the main question before the Hon'ble Supreme Court in that case was whether the trusts settled in the UK were in the nature of specific trusts or discretionary trusts in order to determine whether or not income of the Trust should be included in the return of income of the settler of the Trust being the ex-ruler of Gondal Shri Vikramsinghji and on his death to his son. Shri. Jyotendrasinhiji who was the appellant in this case. The assessee during the assessment proceedings has not brought on record the various details of the Tharani Family Trust in order to show that this decision of the Hon'ble Supreme Court is applicable to her case. In fact, the assessee has not brought on record any material evidence about the Tharani family trust apart from the letter of HSBC that she is a discretionary beneficiary; this fact is already mentioned in the base note itself.

On the other hand, it must be seen that underlying company of the Tharanı family trust, i.e. GWU Investments Ltd is a company having address in the Cayman islands which is a tax haven and the account is maintained in HSBC, Geneva which is known for its banking secrecy laws and in recent times has faced investigation from various authorities in its role in facilitating tax evasion of its clients. Considering the facts of this case, the decision of the Hon'ble ITAT, Mumbai in the case of Mohan Manoj Dhupelia and other in ITA no. 3544/Mum/ 2011 etc, is directly applicable to this case. In this case, the assessee is a beneficiary of Ambrunova Trust having an account in Liechtenstein Bank which is another tax jurisdiction known for its secrecy law and modest tax regime. In fact, in the order of the ITAT, it has been concluded that Liechtenstein jurisdiction qualifies as an off shore financial centre due to a very modest tax regime, high standard of secrecy laws and further foreign investors had the opportunity to establish companies or trust in the principality of Liechtenstein to the enjoy the advantages of off-shore financial centre

The ground of appeal before the Hon'ble ITAT in this case was as follows:

"The ld. Commissioner of Income tax (Appeals), erred in confirming the order of the Assessing Officer making an addition of Rs.2,34,64,398/- on account of alleged undisclosed income, without appreciating the fact that the alleged trust was discretionary trust as neither the amount was accrued nor credited to the Appellant's name, hence addition cannot be made in the hands of the Appellant".

The Hon'ble Mumbai ITAT dismissed this ground of appeal raised by the assesse and held that discretionary trusts are created for the benefit of particular persons and those persons need not necessarily control the affairs of the trust. The bank account of the trust represents unaccounted money of the beneficiaries even though no benefit were transferred to them.

13.1 Considering the facts of the case and the decision of the Hon'ble Mumbai ITAT as cited above it can be concluded that the bank account of the trust represents unaccounted money of the assesse. Considering the fact that the assessee is an Indian having interests and assets in India that no details were given to show the source of money deposited in the HSBC account leads to the circumstances that this unaccounted money is sourced from India. In absence of anything contrary, the only logical conclusion that can be inferred is that that the amounts deposited are unaccounted deposits sourced from India and therefore taxable in India. This presumption is as per the provisions of section 114 of The Indian Evidence Act, 1872 which reads as follows:

"Section 114. Court may presume existence of certain facts-

> **The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particulars case.**

The Court may presume-

> **……(g) That evidence which could be and is not produced would, if produced be unfavrorable to the person who withhold it…."**
>
> **Section 114(g) of The Indian Evidence Act, 1872, thus clearly says that the Courts can presume existence of certain facts if the person liable to produce evidence which could be and is not produced, which if produced would have been unfavorable to the person who withhold it.**

13.2 Further, the provision of Section 5(2) of the Act is reproduced as under:-

> **" Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident included all income from whatever source derived which-**
>
> **(a) Is received or is deemed to be received in India in such year by or on behalf of such person, or**
> **(b) Accrues or arises or is deemed to accrue or arise to him in India during such year."**

During the assessment proceedings and as can be seen from the facts of the case that the assesse has not made out a case that the deposits in the above mentioned accounts in HSBC, Geneva do not all within the ambit of this provision of law.

13.3 As the assesse has chosen not to produce the details of his HSBC bank accounts and the source of deposits thereof, even though he could have been obtained all the details/evidences for the same, the only corollary that could be drawn is that the assesse has decided to withhold the information as if producing

it would have gone against him. Thus, as per the provisions of Section 114 of The Indian Evidence Act, 1872 also, it need to be held at this stage that the information/details not furnished were unfavorable to the assesse and that the source of the money deposited in the HSBC account is undisclosed and sourced from India. Nova Promoters and Finlease (P) Ltd. 342 ITR 169 (Del), highlighting the legal effect of section 68 of the Act, the Division Bench has observed in para 32 that " The tribunal also erred in law in holding Assessing Officer ought to have proved that the monies emanated from the coffers of the assesse company and came back as share capital. Section 68 permits the Assessing Officer to add the credit appearing in the books of account of the assesse if the latter offers and explanation regarding the nature and source of the creditor the explanation offered is not satisfactory. It placed no duty upon him to point to the source from which the money was received by the assessee.

13.4 The Hon'ble Supreme Court in the case of Sumati Dayal Vs. Commissioner of Income Tax (1995) 214 ITR 801 (SC) held that income tax proceedings are civil proceedings and the degree of proof required is to be judged by preponderance of probabilities. The Hon'ble Supreme Court, in the case of CIT v Durga Prasad More [1971] 82 ITR 540 (SC), has held that "the taxing authorities were not required to put on blinkers while looking at the documents produced before them they were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents....The apparent must be considered as real only it is shown that there are reasons to believe that the apparent is not the real and that too taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probability.... Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and tribunals have to judge the evidence before them by applying the test of human probabilities. The Hon'ble Punjab and Haryana High Court, in the case of Som Nath Maini v CIT [2008]306 ITR 414 (Punj.&Har.), has held that "the assessing officer is to apply the test of human probabilities for deciding genuineness or otherwise of a particular transaction. Mere leading of the evidence that the transaction was genuine, cannot be conclusive. Any such evidence is required to be assessed by the assessing officer in a reasonable way. Genuineness of the transaction can be rejected in case the assessee needs evidence, which is not trustworthy, and the Department does not need any evidence on such an issue. In case of Smt. Vasantibai Shah 213 ITR 805 (Bom) the court observed that The Income tax Officer is entitled to take into consideration the totality of the facts and circumstances of the case and to draw his own inference on the basis thereof. Circumstantial evidence in such cases is not impermissible. Incases like this it is only the circumstantial evidence which will be available. No direct evidence can be expected....." In case of JS Parker 94 ITR 616 (Bom) it was held that" the tax liability under the Income tax Act is of civil nature. To fasten a tax payer with such a liability it is not necessary that the evidence should be in the nature of "beyond doubt" as is required to fix a criminal liability. Tax liability can be fastened on the basis of preponderance of probabilities."

14. In view of the above, the peak amount as appearing in the Base Note of the assessee's HSBC account in AY 2006-07 being USD 44,041,227.22 which

translates to Rs. 196,46,79,146/-(@Rs 44.61 per USD being the exchange rate on 31.03.2006 as per RBI) is hereby added to the total income of the assessee which is received or it deemed to be received in India in this year by the assessee or on his behalf or accrues or arises or is deemed to accrue or arise to him in India during this year.

17. Aggrieved, assessee carried the matter in appeal but without any success. Learned CIT(A) confirmed the conclusions so arrived at by the Assessing Officer, and observed as follows:

21. The focus of the submission is shifting responsibility on Assessing Officer without furnishing any supplementary and relevant details. Vital facts (at cost of repetition) regarding the entities involved/persons are as under

A. Smt. Renu Tharani is the beneficiary of Tharani Family Trust.

B. Smt. Renu Tharani is the sole beneficiary

C. Tharani Family Trust is the sole beneficiary of GWU Investments Ltd

D. Smt. Ren Tharani holds interest in GWU Investments Ltd through Tharani Family Trust

E. Income attributable directly or indirectly to GWU Investments Ltd or Tharani Family Trust pertains to Smt. Renu Tharani

F. GWU Investments Ltd having address in Cayman Islands has investment managed as Shri Haresh Tharani, son of the appellant.

The Assessing Officer has rebutted the submission of the assessee before him. Virtually the same submission on the aspect is reiterated before me. As Assessing Officer has effectively rebutted the same, backed by judicial precedent, I hold that the reasons recorded in rejecting various submissions in the assessment order. The submission before me highlights certain drawbacks in the finding of the Assessing Officer is in order. It can be seen that arguments like "The Assessing Officer has also not brought any material to show and demonstrate that any money has been deposited by the assessee" are placed when the onus is on assessee that the same is explained lies with her, as judicially accepted. Another claim is full co-operation which is unacceptable since consent waiver form was not furnished when the Assessing Officer sought for same at the time he issued the first posting notice. Further, he cites that in the case relied upon by Assessing Officer, the assessee concerned is a resident where as the appellant is non-resident. This is not the issue here and the issue is decided on the totality of various circumstances and facts, discussed in this order The holding pattern of entities concerned and the contents of the base note cement the issue. The fact that the appellant is sole beneficiary implies that there is never a case of distribution and all income concerning the asset only belongs to her i.e. will accrue or arise only to her from the moment beneficial rights came to the appellant.

22. <u>E. Information provided by appellant to justify their claim</u>

Document	*Contents*	*Inference and Conclusion*
Letter addressed to Mrs Renu Tharani by HSBC Private'Bank (Suisse).	***Dear Mrs Tharani,*** ***Further to your request, we hereby confirm that you, Mrs Renu Tharani, are not the holder nor, to the best of our Knowledge, the beneficial owner of any account opened in the books of HSBC Private Bank(Suisse) SA.*** ***However, you are a discretionary beneficiary of a trust called the Tharani family Trust for which HSBC Guyerzeller Trust Company, C.1 acts as trustee. No bank account is maintained in the name of the trustee, and we confirm that you are not, nor have your even been, an authorized signatory on the bank account held in the name of the trust's underlying company***	***This contradicts the base not Exactly for the same reason consent waiver was sought. This was refused. This is a letter addressed to Mrs. Renu Tharani. The information with Assessing Officer has backing of law which outweighs the documents now relied upon.***
Letter addressed to Mr. Mahesh Tharani by HSBC Private Bank (Suisse) Zurich	***Dear Mr. Tharani,*** ***As per the request of director, we hereby confirm that, GWU Investments Ltd. Was holder of the account 1414771. According to our records GWU Investments Ltd. Used to be an underlying company of the Tharani Family Trust for which Mrs. Renu Tharani was a discretionary beneficiary. To the best of our knowledge, The Tharani Family Trust was terminated and none of the assets deposited with HSBC Private Bank (Suisse) SA were distributed to Mrs. Renu Tharani.***	***This is a private letter. Again in the background of refusal to file consent waiver which can provide Assessing Officer information having backing of law weakens case of appellant also as to why the letter was obtained from Zurich branch is not explained.***

Thus, when appellant had to opportunity to cooperate with provision of law by filing consent waiver, by with authentic information would have come, the appellant furnishes letters purportedly by HSBC Bank, Geneva to her and HSBC Bank, Zurich to her son Shri Mahesh Tharani. The documents cannot be relied upon as to is merely letters addressed to persons and lacks statutory backing. A document with statutory backing again from foreign source with counters the above letters are discussed in next paragraph.

23. In course of hearing before me additional information received from foreign jurisdiction was provided to assessee. It contained settlement between GWU of 1

Prabhat Building, 28 B Road, Chruchgate, Mumbai 400020 (the settler) and HSBC International Trustee Ltd. Cayman Islands British West Indies (the original trustee). In schedule II it is clearly seen that the settler is also having Indian Address pointing to its origin i.e. Mumbai, India. This is an additional dimension. The document in page 21 where schedule II is figuring mentions 'Renu' as the beneficiary mentioned as settler's daughter and being so settler is father of 'Renu'. This brings to light probable expansion of GWU which when the entire document is read through together leads again to GWU Investments Limited. In the said document bunch, there is a letter addressed to HSBC Trust Services (Suissee) AG by HSBC International Trustee Limited as Trustee of the Tharani Family Settlement which reads as under:

We, HSBC International Trustee Limited confirm that we hold issued shares of GWU Investments Limited as Trustee of the Tharani Family Settlement

Vital facts emerging from the document bunch obtained officially from Sovereign Government shows address of both appeal and that of GWU is same viz 1 Prabhat Building, 28 B Road, Chruchgate, Mumbai 400020 and that HSBC International Trustee Limited has confirmed that they hold issued shares of GWU Investments Limited as Trustee of the Tharani Settlement. The trust has only one beneficiary viz Renu Tharani. Shares or a company which provided Indian Address to a Foreign Bank is held on her behalf. These facts reinforce the case against her.

24. Settlor means "a person who makes a settlement, especially of property on establishing a trust". This adds additional dimension to case. Settlor is Indian, holder of asset is India. Address given to asset based abroad by the beneficiary (sole beneficiary) is in India and not proven to be reported in the country of residence. Lastly and most important consent waiver" was never filed before Assessing Officer showing that the appellant was disinclined to department collecting authentic information from HSBC Geneva. The legally settled principle of discharging the onus that the assessee is out of explained source fails in her case.

25. In this connection, during course of hearing specific attention was brought to contents of decision in Soignee. R Kotharí Vs DCIT, Central Circle-8(3), Mumbai &Ors in Writ Petition (L) No. 3177 of 2015 of Mumbai High Court dated 05.04.2016. This considers many issues involved starting from issue of notice under section 148 on Non- Resident. Assessment of information in similar case received from French authorities on bank account in HSBC, Geneva etc. It also deals with impact of refusal to sign consent waiver. These goes against the assessee. An extract from the order is reproduced below:

> ***In the normal course of human conduct if a person has nothing to hide and serious allegations/questions are being raised about the funds a person would make available the documents which would put to rest all questions which seem to arise in the mind of the Authorities. The conduct on the part of the Petitioner and her uncle in not being forthcoming, to our mind leads us to the conclusion that this is not a fit case where we should exercise our extra ordinary writ jurisdiction and/or interfere with the orders passed by the authorities under the Act. If a person has nothing to hide we believe the person would have cooperated in obtaining the Bank Statements.***

The same is seen in this case. It is more denials and shifting of responsibility to Assessing Officer in place of hard facts were the ones that the appellant was to produce before him.

26. The appellant filed detailed submission, counter comments to remand report as well as on new information received by Assessing Officer. Most of the objections have already been addressed and some needs discussion. They are (along with comments on the same):

> ***a. The AO has not rebutted the objections in his remand report regarding validity of reassessment proceedings: The decision maker in this case is CIT(A). He has the power to decide a ground of appeal irrespective of whether a remand report is received or not and rebutted or not. The matter has been addressed when ground was adjudicated earlier in this order.***
>
> ***b. The trust deed states that assessee is not settler of trust or shareholder or director of GWU Investment Ltd; This does not affect the issue. We are concerned with the Beneficial Ownership of the trust asset which is sole in the a beneficiary of the assets/income under consideration of Assessing Officer without the authorization of the appellant.***
>
> ***c. Indian address given is passport address and should not be viewed adversely. On this matter, this in not to be viewed in isolation but considering totality of circumstances, consideration of vital information brought before IT authorities and lack of information from side of appellant, These were the determining factors in the decision in this order***
>
> ***d. There was interim remand report. The appellant seeks the same: As this is not considered in my decision making since it contained no meaningful comments and is basically for seeking extension of time, the same is not provided. No prejudice is caused to assessee.***
>
> ***e. Certain information from foreign tax jurisdiction is still due: As these have not been received there is no case of drawing any inference. Some information is to come from foreign jurisdiction like Cayman Islands, and receipt is uncertain and appellate proceedings cannot be held in abeyance indefinitely under uncertain circumstances.***
>
> ***f. Reasons for not signing consent waiver: In para 12.9 some reasons are stated. It is that the account does not pertain to the appellant and hence not signed. If there is nothing to hide, the same could be provided and the Assessing Officer or the foreign tax agency, in accordance with provisions of tax treaty will decide whether to provide the information or not. The reasons adduced is unconvincing and unacceptable.***

27. This is a case were the decision was to be made by Assessing Officer and the undersigned where information flow for taking decision appellant. It is more not inadequate form side of on producing case decisions, denials and providing alternate Correct decision comes when correct input is presented. The following questions were recurring in course of hearing and stood unanswered.

(a) if Renu Tharani denies the ownership or any connection with the account in individual capacity or as a trustee or as a beneficiary in any form, has it been notified to HSBC Geneva?

(b) Did she or the trust or any other person or beneficiary report income which accrued or arisen from the account after she came to notice the existence of account at least to Indian IT authorities or authorities in any other tax jurisdiction?

(c) What is the status of the account now? Does the asset exist now? If not the appellant, who received the same?

(d) Who operates the account now? Who has control over the account? If not the appellant, who has authorised the transactions in the account?

None of them could be answered with documentary evidence. These are strong background factors which goes against the appellant and cements the case against her.

28. In paragraph 8 and 9 of this order matters concerning the Affidavit was discussed. The background is that the Assessing Officer sought an affidavit in course of proceedings before him but was not filed. As a substitute for same it as filed before me as additional evidence in paragraph 9 of this order. Nevertheless it is an affidavit. The legal position on affidavit is already discussed. As evidence to buttress the contents of the affidavit and since many questions were left unanswered along with the fact that consent waiver form was never filed during assessment proceedings, I do not accept the contents in view of otherwise strong evidences against the appellant. I course of hearing before me it was stated that they are ready for giving open consent for any enquiry. Collection of information has a procedure as per tax treaty between sovereign nations. It is not to be at will and at inappropriate time, the appropriate time being when Assessing Officer sought the same. Considering all aspects, I disregard the contents of the affidavit.

29. The Appellant relied on many case decisions. In none of the cases the combination of facts brought out in this case applies. Hence they are not considered. Also produced is order of CIT(Appeals) -56, Mumbai circumstances. I find that the fact brought out in this case is different and far more and same which according to Appellant is on identical cannot be adopted as such. Only when facts and circumstances are identical rules of precedence is followed. That is not the case here. The layering/structure of entities, information on the case etc are different. Hence they were not considered.

30. In view of foregoing discussion, I hold that the Assessing Officer has approached the assessment correctly in assessing income as per the base note received from French Government.

18. Coming to the quantum of additions, however, learned CIT(A) upheld the stand of the assessee, and gave certain directions to the Assessing Officer, which are reproduced below for ready reference:

31. Coming to quantum of income to be assessed (raised against revised grounds 22 and 27) the objection of appellant is that the addition is not correct. The

AR of the appellant has produced an excel sheet to demonstrate same and prima facie there is a probability of duplication. This however is a matter of computation. Upon perusal of the base note it is seen that the entries are styled as if it is normal banking transaction with debit/credit entries titled "Mutual Fund", "Liquid assets", "Stocks", "Structured Products", "Advances and Loans", "Bonds", "Fiduciary Deposits" etc.. Nevertheless it is debit and credit entries. Since a finding is made that the income on the basis of information contained in the base note is assessable under Income Tax Act 1961, correct computation is necessary. The assessing officer can assess only such sums that fit into definition of sections 5(2) r.w 8 r.w 9 r.w 69,69A,69B, as applicable in the case, emanating from the base note. Any other computation will be incorrect. Further, according to appellant there is duplication over months within the year.

32. In view of discussion is para 31, the Assessing Officer is directed to assess only such sums, confining to information in base note and assessable under the provisions of Income Tax Act 1961 and subject to other finding in this order. For this the Assessing Officer may direct assessee to furnish detailed computation and after examination of the same (if filed) decide on quantum of income to be retained considering the data contained in the base note and those emanating from the same. Any duplication, that had occurred, must be deleted. No order prejudicial to assessee should be passed without granting opportunity of being heard.

19. So far as these directions are concerned, the matter rests there. It appears that the assessee has not furnished any information, or pursued the matter further. The assessee is in appeal on the addition being confirmed in principle.

Submissions of the parties:

20. Learned counsel's contention is that when the account did not belong to the assessee, there is no question of assessee being in a position to furnish any evidence in respect of the same. He submits that he does not have information whatsoever about the source of deposits in this account, and the assets have held therein. It is pointed out that the account is held with GWU Investments Limited with which assessee has no relationship whatsoever. The assessee is at best a beneficiary of the discretionary trust, settled by GWU Investments Limited, but then in such an eventuality, the question of taxability would arise only at the point of time when the assessee actually receives any money from the trust. Reliance is placed on the judgment of Hon'ble Supreme Court, in the case of **CWT Vs Estate of HMM Vikramsinhji of Gonda** *(supra),* in support of this proposition. It is his submission that entire case of the Assessing Officer is based on gross misconception of facts and ignoring the well settled legal position. He points out all these fallacies once again. The assessee does not have any account with the HSBC Private Bank (Suisse) SA, and yet assessee is treated as owner of the account. The account is of the investments, and it is treated as a bank account. The assessee is a non-resident, taxable in India in respect of its income earned in India, and yet the assessee is being taxed in respect of an account which undisputedly has no connections with India. Denying the tax liability in respect of such an account at all, it is submitted that if at all it has tax implications anywhere in the world, this liability is in the jurisdiction of which the assessee is a resident. The assessee is taxable only on disbursement of the benefits to the beneficiary, but then the beneficiary is being taxed in respect of the corpus of the trust. Learned counsel thus submits that the impugned additions are, even on merits, wholly devoid of any substance. He, however, submits that all these aspects are wholly academic inasmuch as the reassessment

itself is devoid of legally sustainable merits. He nevertheless files a note pointing out errors in the assessment order and the CIT(A)'s order which is reproduced below for ready reference:

A. Analysis of the Assessment Order

Para & Page no.	AO's Observations	Remarks
Pg 1, Para 1	**Reopening has been done on the basis of the information received that there are various individuals having Foreign Bank Account in HSBC Pvt. Bank which were not disclosed to Indian Taxation Department.**	**This information cannot be a basis for reopening of Assessment in the case of Non-Resident** **(i) as there is no prohibition for non-resident to have a foreign bank account.** **(ii) there is no requirement for non-resident to disclose foreign bank account to Indian Taxation Department.**
Pg 1, Para 2	**In this para it has been stated by the AO that according to the base note received, the assessee is holding an account in HSBC Pvt. Bank.**	**This statement by the AO is factually incorrect as the base note received is not that of the assessee but of GWU Investments Ltd.** **Further, assumption by the AO that base note is a bank account is factually incorrect as is evident from the base note which is not a bank account but just a statement of investment. Thus, it is a mistaken belief of the AO that the base note is a bank account.**
Pg 2, Para 2 & 3	**AO has drawn adverse inference on the basis of the base note assuming that the amount stated therein is the taxable income arisen in India which has escaped assessment**	**On going through the base note there is no such information that the amount stated is the income and such income has arisen in India and that too in the year under consideration.** **The AO conveniently ignored the facts stated therein. In this base note the name of the company GWU Investment Ltd and its Director, Mr. Tharani Haresh Tikam and his address at New Jersey, United States of America is clearly stated.** **Thus, by no stretch of imagination it can be assumed that the base note pertains to**

		assessee and what is stated therein is the income that has arisen in India and that too in the Financial Year 2005-06 i.e. Assessment Year 2006-07.
Pg 4, Para 5	**AO has stated that assessee has not provided Bank Account Statement.**	**This assertion by the AO in this para contradicts his own assertion in Para 2, Page 1 where he has stated that the base note received is the bank account. In case the AO has received the bank statement where was the need for AO to ask the assessee to give bank statement. Further, the assessee has categorically stated that she does not have any bank account and as such there was no way she could have provided her statement.**
Pg 7, Para 12	**AO has alleged in this para that assessee has not stated that the source of deposit in HSBC account is not from India.**	**The allegation by the AO is incorrect. Assessee has filed an Affidavit placed at Paper Book Page 41-46 where in she has categorically stated that the bank account does not belong to her. Having stated so on oath the onus was on AO to bring material that there is a bank account in the name of the assessee or the deposits in the bank account are out of the income earned from India.** **It was also stated that the assessee does not have any business connection in India and hence, there is no business income which is earned in India. Thus, there was a categorical assertion that source of deposit in the bank account is not from India.** **Further, after receipt of the assessment order and in order to remove any apprehension the assessee filed another affidavit before the CIT(A) on which remand report was also called by the CIT(A) from the AO. In this affidavit, in para 4 it was categorically stated *"4.***

		That I never had any bank account with HSBC Bank, Geneva. ***5. That I never been a signatory to any bank account with HSBC Bank, Geneva.*** ***6. That I am neither a Director nor a Shareholder of GWU Investment Ltd. in para 4 the source of deposits made in HSBC Bank in Geneva has no source in India."***
Pg 8 Internal Para 4	**AO has invoked provision of section 9 of the Act by making an allegation that there is nothing to suggest that amount in this account lies outside the purview of section 9 of the Act.**	**This assertion by the AO is legally untenable.** **Section 9 is a deeming provision and onus is upon the AO to establish that the income falls within the deeming provision. Section 9 is a deeming provision which is applicable in respect of income accruing or arising:** **%** **(i) from any business connection in India.** **(ii) from any property in India.** **(iii) from any asset or source of income in India or** **(iv) through the transfer of a capital asset situated in India.** **The AO has not shown any business connection of the assessee in India. In fact, the AO has admitted that assessee has no business connection as no business income has been assessed as can be seen from the assessment order where there is no addition other than the impugned addition on account of business. It is also not the case of the AO that this income has arisen from any property or any asset in India. There is no material or evidence whatsoever even to doubt that such deposit in HSBC Bank has arisen from any source in India.**

Pg 8& 9, Para 13	**AO has ignored the judgment of the Hon'ble Supreme Court in the case of Commissioner of Wealth Tax, Rajkot Vs. Estate of Late HMM Vikramsinhji of Gondal reported in [2014] 363 ITR 679 and has preferred to rely upon judgment of ITAT in the case of Mohan Manoj Dhupelia ITA No. 3544/Mum/2011**	**It is submitted that judgment of ITAT in the case of Mohan Manoj Dhupelia was that of a resident not non-resident. Further, judgment of Supreme Court was delivered on 16.04.2014 and was not considered in the case of Mohan Manoj Dhupelia which was delivered on 31.10.2014. Further, the judgment of the Supreme Court in the case of Vikramsinhji has been now considered in following cases whereby it has been held that in the case of discretionary trust income arises in the hands of the beneficiary only at the time of distribution only.** **1 .Shri Harshad Ramaniklal Mehta Versus DCIT in ITA No. 7307/Mum/2011 dated 04.09.2019** **It may be relevant to point out that in this case there were four beneficiaries of the trust out of which two were non-resident. The proceeding against two persons were dropped by the AO itself as these two persons were nonresidents and the dispute before the 1TAT was with respect to resident only. This fact has been captured in para 9 of the Order which is a Synopsis filed by the Revenue in the course of the hearing before the bench.** **2. Deepak B Shah and Kunal N Shah Versus ACIT in ITA NO. 6065/Mum/2014 dated 30.10.2018** **3. Shri Dwarka Prasad Agarwal Versus ITO in ITA No. 4591/Mum/2016 dated 05.10.2017** **Accordingly, even if the**

		assessee was beneficiary no income can be imputed to her till the time the same is distributed. In the present case, there is no dispute to the fact that the assessee was not the settler of the trust and the trust was discretionary trust as per the information collected by the AO himself and forming part of the remand report.
Pg 8, Bottom Para	**AO has stated that the account in HSBC Geneva was opened in Para Cayman Island which is a known tax heaven.**	**The observations made by the AO nowhere substantiate the allegation. On the contrary, it supports the case of the assessee. The AO while making these observations lost track of the fact that assessee is a non-resident and income which accrues or arises or which is received or deemed to be received in India is only taxable in India. The AO admits that this account was opened outside India and the company was also out of India. Thus, the same cannot be subjected to tax in India.**
Pg 9, Para 13.1	**AO in this para is making assumption by observing "in view of the facts and circumstances of the case and the discussion as above it can be *presumed* that source of deposits in the HSBC, Geneva account of the assessee is from India and hence, is taxable in India"**	**This statement by the AO in this para confirms the fact that he does not have any evidence or material to support its case that the source of deposit in HSBC, Geneva account is from India. He is indulging into surmises by stating "it can be presumed". There cannot be any presumption. The addition can only on the basis of evidence. It was AO's allegation and it is he who has to bring material and demonstrate that the money in HSBC Geneva account has accrued or arisen in India.**
Pg 10, Para 13.2	**AO has stated *"that the assessee has not made out a case that deposits in the above mentioned accounts in HSBC, Geneva do not fall within the ambit of this provision of law."***	**The AO is putting a negative onus on the assessee. It is an admitted fact that the assessee is a non-resident and accordingly only such income as has accrued or arisen or received or deemed to be**

		received in India is chargeable to tax. The money is not in India as per the allegation itself. Thus, it was for the AO to show that the money has accrued or arisen in India or was received in India. In fact, AO is ignoring the facts and the explanation of the assessee that she has been a non-resident all along and has no business connection whatsoever in India. The assessee having stated these facts and the same tiaving not been rebutted or found false, the assessee has discharged its onus. It was for AO to demonstrate that the amount fall within the ambit of Indian Tax Law.
Pg 10, Para 13.3	**AO has referred to the judgment of Delhi High Court in the case of Nova Promoters and Finlease Pvt. Ltd. 342 ITR 169 (del)**	**Suffice to say that this judgment is in respect of Share Capital raised by a resident company and hence, same has no relevance with that of the assessee. In the case of the resident Global Income is chargeable to tax. Further, in this case the amount was found credited in the bank account in India. The assessee is a non-resident and the issue is that of deposit in foreign bank account which is not chargeable to tax in the hands of nonresident in view of provision of section 5(2) of the Income Tax Act.**
Pg 14, Para 13.4	**In this para the AO has relied upon the Supreme Court judgment in the case of Sumati Dayal vs CIT 214 ITR 801 (SC) and few other judgments.**	**In fact, these judgments support the case of the assessee. In the case of Sumati Dayal, the issue was that of human probability and it was held that it was humanly not probable that assessee would have won jackpots at number of times at the Race Course at Hyderabad and Bangalore. Thus, the Court has applied the Principal of Human Probability. If we apply this principle here it is not probable that a person who is**

		a non-resident all alone and has a bank account in Geneva, such deposit would have arisen from income earned from a country i.e. in India with it, he does not have any business connection or any source of income which may indicate that he would have earned such income from India. Thus, the probability of earning income from India in the absence of any source in India is humanly not possible.
B. Analysis of the CIT(A) Order		
CIT (A) order Page 5, Para 11	**The CIT(A) has rejected the contention of reopening by stating that information was received from authentic source and at the time of reopening the residential status of the assessee was not known.**	**The CIT(A) has arbitrarily rejected the contention of the assessee without even addressing the issue raised by the assessee was not known.** **the fact that the status of the assessee is that of non-resident. This status is admitted by the AO in the Assessment Order. The CIT(A) has ignored the aspect that once the assessee has filed objection and brought on record his status as non-resident and which was not disputed by the AO, the AO ought to have closed the reassessment proceedings. This is exactly what has been stated by the Supreme Court in the case of GKN Driveshafts (India) Ltd. vs ITO and others 259 ITR 19 (SC). The AO could not have continued the proceedings for verification as assessment can be opened only when there are reason to believe that income has escaped assessment and not for making out a case to find out whether income has escaped assessment or not. The AO in the Order rejecting the objection has accepted that she is non-resident but has gone further to observe that assessee must show with**

		material that no amount so deposited in the HSBC account are from any source in India. Thus, the AO has admitted that there was no material with him to show that the amount in HSBC account is from any source in India. In the absence of any such material re-opening of assessment of a non-resident in respect of deposit in bank outside India is bad in law.
		As per provision of section 139(1), every person being a person other than a company or a firm, if his total income during the previous year exceeded the maximum amount which is not chargeable to tax is required to file the return. Thus, the obligation to file the return is only when income chargeable to tax exceeds the maximum amount not chargeable to tax. In order to expand the scope of filing return, the Finance Act, 2012 has inserted 4th Proviso below section 139(1) making it mandatory for a person who is a resident to furnish a return in case at any time during the previous year, he has held a foreign asset including financial asset in any entity located outside India. Further, income tax return form was amended by inserting foreign asset schedule called FA applicable only for resident and not for non-resident. Thus, there is no requirement for a non-resident to furnish a return in case his income does not exceed the maximum amount not chargeable to tax. Further, in case the income of non-resident exceed the maximum amount not chargeable to tax and he is required to file the return then there is no requirement

		to furnish the details of the foreign assets (including financial interest in any entity) located outside India. Further, it is important to point out that for the Assessment Year under consideration 2006-07 there was no such condition and there was no column in the tax return to disclose foreign assets even by a resident. It was only Finance Act, 2012 which inserted 4th Proviso to section 139(1) and consequent thereto tax returns form were amended providing a schedule for disclosure of foreign assets by resident. This requirement was applicable only for resident as is evident from the instructions attached to the return form whereby it has been stated *"a resident having any assets (including financial interest in any entity) located outside India or signing authority in any account located outside India shall fill out schedule FA (Foreign Assets).*
Pg 8 Para 17 CIT(A) Order	**CIT(A) has held that undoubtedly the appellant is non-resident and income taxable is governed by section 5(2) r.w.s. 9. The CIT(A) has held that it is impossible to hold that asset/income under consideration does not fall in jurisdiction of Indian Tax Authorities. Assessee is a citizen of Indian and the address provided for the foreign asset is located in India.**	**The findings of the CIT(A) are contrary to the provision of the law and hence, legally untenable. Under the Indian Tax Law, taxability is not on the basis of citizenship but on the basis of residential status. Thus, the findings recorded by the CIT(A) on the basis of Indian citizen are contrary to law. CIT(A) had admitted the fact that 'undoubtedly the appellant is nonresident and income taxable is governed by section 5(2)" read with section 9.' Having held so there was no reason to uphold the addition merely on the basis of the address stated in the base note. Section 5(2) read with section 6 nowhere says that status of an assessee will be determined on the basis of**

		address. Further, section 5(2) nowhere says that income shall be assessed on the basis of the address in a document like base note. Section 5(2) is very clear that income is taxable in the hands of non-resident when such income has arisen or has been received in India. In the absence of any material or evidence that income has arisen or received in India, the addition cannot be sustained.
Pg 8 Para 18	**The CIT(A) in this para has referred to section 9(1)(i) and has admitted that it has never been the case of the AO that assessment has been made as a result of business connection.**	**This finding of the CIT(A) in this para is in favour of the assessee. The CIT(A) has held that section 68 is not applicable. The CIT(A) has also held that assessee does not have a business connection in India and section 9(1}(i) is not applicable. If that be the case, the addition is absolutely untenable and he ought to have deleted it.**
Pg 8 to 12 Para 19 to 21	**The CIT(A) in these paras has referred to the beneficial ownership of the assessee stating that the assessee has right to receive directly or indirectly a mandatory distribution or may receive directly or indirectly discretionary distribution from the trust.**	**The CIT(A) relied on the judgment of ITAT in the case of Mohan Manoj Dhupelia. It is submitted that judgment of ITAT in the case of Mohan Manoj Dhupelia was that of a resident not non-resident.** **Further, judgment of Supreme Court was delivered on 16.04.2014 and was not considered in the case of Mohan Manoj Dhupelia which was delivered on 31.10.2014. Further, the judgment of the Supreme Court in the case of Vikramsinhji has been now considered in following cases whereby it has been held that in the case of discretionary trust income arises in the hands of the beneficiary only at the time of distribution only. Further, the reliance is placed on the following decisions: I.Shri Harshad Ramaniklal Mehta Versus DCIT in ITA No.**

		7307/Mum/2011 dated 04.09.2019 **It may be relevant to point out that in this case there were four beneficiaries of the trust out of which two were non-resident. The proceeding against two persons were dropped by the AO itself as these two persons were nonresidents and the dispute before the ITAT was with respect to resident only. This fact has been captured in para 9 of the Order which is a Synopsis filed by the Revenue in the course of the hearing before the bench.** **2. Deepak B Shah and Kunal N Shah Versus ACIT in ITA NO. 6065/Mum/2014 dated 30.10.2018** **3. Shri Dwarka Prasad Agarwal Versus ITO in ITA No. 4591/Mum/2016 dated 05.10.2017** **Accordingly, even if the assessee was beneficiary no income can be imputed to her till the time the same is distributed. In the present case, there is no dispute to the fact that the assessee was not the settler of the trust and the trust was discretionary trust as per the information collected by the AO himself and forming part of the remand report.**
Pg 12 to 13, Para 22	**The CIT(A) has held that the assessee has not given the consent waiver form.**	**It is submitted that it is a trite law that the assessee cannot be asked to do what is impossible. It may be relevant to mention here that the assessee during the assessment proceedings have denied of having the bank account and also that she is not the signatory in the said bank account. The assessee has further filed an affidavit during the both assessment**

		and appellate proceedings confirming the above facts
Pg 13, Para 23	**The CIT(A) has held that the trust has only one beneficiary i.e. the assessee.**	**It is submitted that the statement of the CIT(A) is factually incorrect. The trust has the beneficiaries mentioned in Schedule 2 of the Trust Deed wherein the beneficiaries include the settler as well. Thus, the additions in the hands of the assessee treating it to be the sole beneficiary is untenable and bad in law.**
Pg 14. Para 24	**The CIT(A) has held that the assessee has failed to discharge the onus of explaining the source of income.**	**The CIT(A) has put a negative onus on the assessee. It is an admitted fact that the assessee is a non-resident and accordingly only such income as has accrued or arisen or received or deemed to be received in India is chargeable to tax. The money is not in India as per the allegation itself. Thus, it was for the AO/CIT(A) to show that the money has accrued or arisen in India or was received in India. In fact, AO is ignoring the facts and the explanation of the assesses that she has been a non-resident all along and has no business connection whatsoever in India. The assessee having stated these facts and the same having not been rebutted or found false, the assessee has discharged its onus. It was for AO to demonstrate that the amount fall within the ambit of Indian Tax Law.**
Pg 14.Para 25	**The CIT(A) has relied upon the judgment of Bombay High Court in the case of Soignee R Kothari vs. DCIT**	**The CIT(A) has ignored the fact that this judgment was in a writ petition where the High Court has refused to invoke its extra ordinary jurisdiction under article 226. Further in this judgment in para 1. Further in this judgment in**

		para 15 it has been clearly stated that the court is not expressing any opinion on merits and the parties are entitled to raise all contentions available to it in law before the Authorities.
Pg 14, Para 26	**The CIT(A) on considering the remand report has held that** • **the structure is that there cannot be beneficiary of assets/income under the consideration of AO without authorization of appellant.** • **The CIT(A) again in this para has upheld the order of the AO on the reasoning that assessee is a citizen of India and has provided Indian Address.**	**This CIT(A) has himself admitted that the assessee is not the settler of the trust or Shareholder or Director of GWU Investment Ltd.. It was submitted that in order to remove any apprehension the assessee filed another affidavit before the CIT(A) on which remand report was also called by the CIT(A) from the AO. In this affidavit, in para 4 it was categorically stated "4. That I never had any bank account with HSBC Bank, Geneva.** **5. That I never been a signatory to any bank account with HSBC Bank, Geneva.** **6. That I am neither a Director nor a Shareholder of GWU investment Ltd. in para 4 the source of deposits made in HSBC Bank in Geneva has no source in India."** **As discussed hereinabove under the Indian Tax Law income is chargeable to tax on the basis of the residential status and not on the basis of citizenship and the address.**
Pg 14, Para 27	**The CIT(A) has rejected the affidavit filed to rebut the allegation of the AO in the Assessment Order that assessee has not filed affidavit that the amount in HSBC Account has not accrued or arisen in India.**	**This affidavit was filed as a matter of abundant caution since AO in the Assessment Order in para 8.2 on page 8 of the Assessment order has stated that assessee is not above to commit in sworn affidavit that the source of deposits have no source in India. The CIT(A) has forwarded this affidavit to the AO and a remand report was also called for. This affidavit and even the earlier affidavit categorically stated that the**

		source of deposit in HSBC account have no source in India. The affidavit has been rejected arbitrarily ignoring the Mehta Parikh & Co. vs. CIT 30 ITR 181 (SC).

21. Learned Departmental Representative vehemently relies upon, and elaborately justifies, the orders of the authorities below. He submits that it is a case in which a specific information has come to in the possession of the Government of India, through official channels, and this information, amongst other things, categorically indicates that the assessee was beneficiary and beneficial owner of a particular account which had peak assets worth US $ 3,97,38,122. The genuineness of this account is not in doubt and has not even been challenged by the assessee. These realties cannot be wished away. The income tax department has discharged its burden of proof by brining on record authentic information received from, through Government channels, about the bank relationships which were unaccounted in India and unaccounted abroad. Whatever documents the assessee has given are self-serving documents and hyper technical explanations, which do not contradict the official information received by the Government of India, through official channels, and it does in fact corroborate and evidence the existence of account with the assessee as beneficiary, and, in any case, these documents cannot be considered enough to discharge burden of the assessee that the evidences are not genuine or the inescapable conclusions flowing from the same. All that the assessee says is that she has no idea as to who did it, and passes on the blame to a Cayman Island based company which was operating the said account, but then Cayman Island company cannot be a person unconnected with the assessee. It is inconceivable that a rank outsider will be generous enough to put that kind of huge money at her disposal or for her benefit, but, as a beneficiary, she is expected to know the related facts to which she alone knows. The fact of the Swiss Bank accounts being operated, through conduit companies based in tax havens, is a common knowledge, and, seen in this light, if the assessee has an account for her benefit in a Swiss Bank- whether she operates her directly or through a web of proxies, the natural presumption is that this is her money which she must account for. It is also pointed out that within months of her changing the residential status, this account was opened and the credits were afforded. Where did this money come from? Obviously, in such a short span of time, this kind of huge wealth of several millions of dollars cannot be earned by her abroad, but then if she has shown that kind of earning anywhere to any tax authorities, to that extent, the balance in Swiss account can be treated as explained. He submits that all these technicalities, which are sought to be raised by the learned counsel, are of no use and the judicial precedents, rendered in altogether different context, cannot be used to defend the unaccounted wealth stashed away in assessee's account with HSBC Private Bank, Geneva. He then makes general submissions about the Swiss Bank accounts and makes reference to the unaccounted monies being stashed away therein. A quick reference is made to the HSBC Bank, Geneva, accounts coming to the light, for keeping wealth hidden from taxmen, and the usual *modus operendi* of the same. It is submitted that people who use such anti social modes of keeping monies abroad, or are a party to such manoeuvrings, deserve no leniency anywhere in the world. He reiterates that it is not the case of the assessee that the taxes are paid on this hidden wealth anywhere in the world, and the assessee is simply living in denial by taking hyper-technical defences. We are thus urged to confirm the action of the authorities below and decline to interfere in the matter.

22. In brief rejoinder, learned counsel submits that these sweeping generalizations have no relevance to the facts before us. The hard reality is that the account does not belong to the assessee, that there is no direct or indirect evidence to support that inference, that the assessee was only a beneficiary of a trust but the taxability in her hands must, at best, be confined to the monies actually received from the trust, that admittedly GWU Investments Ltd was owner of the account- in which neither the assessee is a director or a shareholder, and that, in any case, nothing remains in the account as the same stands closed now. It is then reiterated that the assessee is a non-resident and she cannot be taxed in respect of monies credited, even if that be so, in her accounts outside India. He once again reiterates that there is no evidence whatsoever of the assessee having account abroad, that whatever evidence has been given to the assessee is successfully controverted by the assessee, that assessee is a non-resident and her taxability is confined to the incomes sourced in India, and that, for the detailed reasons advanced by him, the impugned addition of Rs 196,46,79,146 in respect of assessee's alleged and non-existent bank account in HSBC Private Bank (Suisse) SA, Geneva, must be deleted.

Our analysis on the merits of the impugned addition of Rs 196,46,79,146 in respect of assessee's account with HSBC Private Bank (Suisse) SA, Geneva.

A: The backdrop

23. It is also important to recall the backdrop in which the information about assessee's account with the HSBC Private Bank (Suisse) SA was received by the Government of India. That will also refresh memories, and certain undisputed facts, about the "HSBC Private Bank Geneva scandal" as it is often referred to. In 2006, after a whistle-blower named Herve Falciani, an employee of HSBC Private Bank (Suisse) SA, Geneva, walked out with information on thousands of accounts, involving wealth hidden from taxmen, the bank came under the glare of multiple regulators for helping wealthy individuals hide millions. The employee fled to France, and in June 2011, the French government had shared the data on Swiss bank accounts with countries such as India, the US, UK, Canada and Australia". That's how Government of India got the information about a large number of cases and this HSBC Bank scandal, involving unaccounted monies stashed away in Swiss Bank accounts, was also subject matter of Special Investigation Team set up under the chairmanship of former Supreme Court judge, Hon'ble Justice M B Shah. The following BBC report about Herve Falciani, former HSBC Geneva employee, can perhaps throw some more light on the backdrop:

> **Revelations that HSBC, one of the world's largest banks, helped some of its wealthy clients evade hundreds of millions of dollars worth of tax have made headlines across the world, but who is the man who lifted the lid on the scandal?**
>
> **On 22 December 2008, police in Switzerland detained Herve Falciani in Geneva. They interrogated the computer systems analyst for several hours, before releasing him under strict instructions to return the following morning.**
>
> **Mr Falciani, however, rented a car, collected his wife and two daughters and made a beeline for the French border. He telephoned the Swiss police from southern France, telling them he wanted to spend Christmas with his family in France, but that he would return in the new year.**

The then-36-year-old dual French-Italian national did not make good on this promise, however, and Swiss authorities have been trying to get their hands on him ever since, thus far to no avail.

Depending on who you believe, Herve Falciani is either a courageous whistleblower responsible for exposing industrial-scale fraud at one of the world's largest banks that deprived governments in dozens of countries of many millions of pounds, or a cynical, calculating criminal who maliciously stole sensitive data on tens of thousands of clients with the intention of lining his own pockets.

Lebanon trip
Herve Falciani grew up in Monaco, which, he says, made going into the financial sector an "obvious choice". In 2000 he joined HSBC in the principality, before transferring to HSBC Private Bank (Suisse) in Geneva, Switzerland six years later.

Between 2006 and 2007, he collected confidential data on more than 106,000 of the bank's customers from more than 200 countries, pertaining to more than 300,000 private accounts. Many of them belonged to prominent figures in business, film, music, sport, and even the heads of royal families.

Thousands of pages pertaining to the accounts were obtained by French newspaper Le Monde and shared with the BBC and more than 50 other international media outlets. The publication of their findings has raised questions as to why HSBC did not do more to prevent tax evasion via its Swiss subsidiary.

In early 2008, Herve Falciani flew to Lebanon with a colleague, Georgina Mikhael. She says the pair were lovers, and that he had confessed to her that he had joined HSBC in the first instance with the intention of obtaining sensitive client data to sell on to third parties.

Herve Falciani transferred to HSBC Private Bank (Suisse) in 2006, having joined the company in his native Monaco six years earlier
He denies any romantic connection between the pair, and says Ms Mikhael's involvement came about after men claiming to be agents of the Israeli intelligence agency Mossad instructed him to visit Lebanese banks and inform them of security breaches at HSBC Private Bank in order to dissuade clients from using clandestine money to fund terrorist activity.

The pair set up meetings with four Lebanese bank managers, and while Herve Falciani used a pseudonym, Georgina Mikhael used her real name, and was promptly put under surveillance by Swiss authorities. She was subsequently questioned by police and gave Mr Falciani up, precipitating his arrest and flight from the country.

Upon arrival in France, he downloaded confidential data on HSBC Private Bank accounts from remote servers and passed on five disks to French authorities,

who could not send him back to Switzerland because of laws preventing the extradition of French citizens.

'Speak the truth'

The French government, through then-Finance Minister Christine Lagarde, who now heads the International Monetary Fund, in turn shared the data Mr Falciani had passed to them with other governments' tax bodies, leading to a number of prosecutions and orders for payment of outstanding taxes amounting to hundreds of millions of dollars.

Mr Falciani was arrested on a Swiss arrest warrant and detained for more than five months in Spain in 2012. However, the Spanish government refused to extradite him to Switzerland the following year, saying violation of banking secrecy was not a crime in Spain, with the state prosecutor praising the former HSBC man as a whistleblower.

In December 2014, the Office of the Attorney General of Switzerland levelled several charges against Herve Falciani, accusing him of qualified industrial espionage, unauthorised obtaining of data, and violation of banking secrecy, noting that "several bank customers" whose data he leaked were also involved as private claimants.

As to his own motivations, Mr Falciani, who has a security detail provided by the French government due to concerns about his personal safety, says he feels a kinship with Edward Snowden, whose revelations about the snooping activity of the US National Security Agency sent shockwaves around the world in 2012.

Mr Falciani says it's crucial that there are people who, "speak the truth and point out systemic problems," and believes that banks such as his former employer HSBC, "have created a system for making themselves rich at the expense of society, by assisting in tax evasion and money laundering.

https://www.bbc.com/news/world-europe-31296007

24. One more BBC report, which could throw some light on the backdrop of this case, is also worth a look. This is as follows:

India will investigate a new list containing names of Indians suspected to have parked untaxed wealth in a foreign bank, Finance Minister Arun Jaitley has said.

Secret documents leaked from HSBC's private bank in Switzerland have revealed that it helped thousands of customers to evade taxes.

The names of nearly 1,200 people from India feature in these papers.

It is estimated that these Indians held $4bn (£2.63bn) in their accounts.

India says illegal funds are often sent to tax havens, including Mauritius, Switzerland, Liechtenstein and the British Virgin Islands, and the new government has said "unearthing black money is an important issue" for them. Experts estimate that Indians hold $500bn (£297bn) in overseas tax havens.

In June, India set up a special task force to find "black money", in one of the first decisions taken by the new Prime Minister, Narendra Modi.

In October, the government gave a list of 627 names of Indians suspected of concealing wealth kept in HSBC from income tax authorities to the Supreme Court.

The top court forwarded the list to the special investigation team (SIT) which is inquiring into the issue of illegal funds.

On Monday, The Indian Express newspaper revealed the names of 1,195 Indians who held bank accounts with a total balance of $4bn in Switzerland with HSBC between 2006 and 2007. The list includes names of some politicians and powerful businessmen.

Mr Jaitley said on Monday that all names will be investigated, but he also cautioned that some accounts might be legitimate.

"Some new names have been revealed whose veracity would be checked by authorities," he said.

The Indian names are part of a global list of account holders in HSBC's Swiss private banking arm and their balances for the year 2006-07. They include people from over 200 countries with a total balance of more than $100bn.

HSBC has admitted that some individuals took advantage of the bank's secrecy clause to hold undeclared accounts. But it said it has now "fundamentally changed".

The documents, stolen in 2007 by a computer expert working for HSBC in Geneva, contain details of more than 100,000 clients from around the world.

Offshore accounts are not illegal, but many people use them to hide cash from the tax authorities. And while tax avoidance is perfectly legal, deliberately hiding money to evade tax is not.

https://www.bbc.com/news/world-asia-india-31282677

25. These actions of the HSBC Private Bank (Suisse) SA have not gone unnoticed so far as law enforcement agencies. It had to face criminal investigations in several parts of the globe, and had to pay millions of dollars in settlement for its lapses. A rather recent press release dated 10th December 2019 from the US Department of Justice, which indicates the nature of aftermath it had to face and the collusion it had in systematic tax evasion by unscrupulous taxpayers from different parts of the world, is as follows:

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE
Tuesday, December 10, 2019

Justice Department Announces Deferred Prosecution Agreement with HSBC Private Bank (Suisse) SA

Bank Admits to Helping U.S. Taxpayers Conceal Income and Assets from the United States; Agrees to Pay $192.35 Million Penalty

HSBC Private Bank (Suisse) SA (HSBC Switzerland), a private bank headquartered in Geneva, has entered into a deferred prosecution agreement (DPA) with the Department of Justice today in the U.S. District Court for the Southern District of Florida, announced Acting Deputy Assistant Attorney General Stuart M. Goldberg of the Department of Justice's Tax Division, United States Attorney for the Southern District of Florida Ariana Fajardo Orshan, and Chief Don Fort for Internal Revenue Service (IRS), Criminal Investigation. HSBC Switzerland admitted to conspiring with U.S. taxpayers to evade taxes and, as part of the agreement, HSBC Switzerland will pay $192.35 million in penalties.

"HSBC Switzerland conspired with U.S. accountholders to conceal assets abroad and evade taxes that every American must pay," said Acting Deputy Assistant Attorney General Stuart M. Goldberg of the Department of Justice's Tax Division. "Banks, asset managers and other financial firms enable such crimes – and we will hold these institutions to account, right along with the taxpayers that use them to facilitate and disguise illegal activities."

"Financial institutions that conspire with U.S. accountholders to hide income in undeclared bank accounts abroad, to avoid being held accountable for tax obligations and augment corporate profit, face substantial criminal and civil penalties for their illicit conduct," said U. S. Attorney Fajardo Orshan for the Southern District of Florida. "In this case, HSBC Switzerland will pay a total civil and criminal fine of more than $192 million, to include a civil forfeiture of $71.8 million, for proceeds illegally derived from their conduct. We remain committed to the investigation and prosecution of individuals who evade their taxes and the financial institutions that assist them in doing so."

"Taxpayers and financial institutions each have the most basic responsibilities to pay taxes and report suspicious activity regarding financial transactions. When financial institutions devise a massive tax evasion scheme and actually facilitate the activity, they not only must be held accountable, they must take actions to ensure this behavior will not happen again," said Don Fort, Chief, IRS Criminal Investigation. "The integrity of our nation's tax system depends on voluntary compliance and fair, consistent enforcement of the law. We owe it to all Americans to hold financial institutions accountable just as we would hold individual taxpayers accountable. Today's DPA shows that engaging in this type of behavior has consequences."

According to court documents, HSBC Switzerland admits that between 2000 and 2010 it conspired with its employees, third-party and wholly owned fiduciaries, and U.S. clients to: 1) defraud the United States with respect to taxes; 2) commit tax evasion; and 3) file false federal tax returns. In 2002, the bank had approximately 720 undeclared U.S. client relationships, with an aggregate value of more than $800 million. When the bank's undeclared assets under management reached their peak in 2007, HSBC Switzerland held approximately $1.26 billion in undeclared assets for U.S. clients.

According to the terms of the DPA, HSBC Switzerland will cooperate fully with the Tax Division and the IRS. The DPA also requires HSBC Switzerland to affirmatively disclose information it may later uncover regarding U.S.-related accounts, as well as to disclose

information consistent with the department's Swiss Bank Program relating to accounts closed between Jan. 1, 2009 and Dec. 31, 2017. Under the DPA, prosecution against the bank for conspiracy will be deferred for an initial period of three years to allow HSBC Switzerland to demonstrate good conduct. The agreement provides no protection for any individuals.

The $192.35 million penalty against HSBC Switzerland has three parts. First, HSBC Switzerland has agreed to pay $60,600,000 in restitution to the IRS, which represents the unpaid taxes resulting from HSBC Switzerland's participation in the conspiracy. Second, HSBC Switzerland agreed to forfeit $71,850,000 to the United States, which represents gross fees (not profits) that the bank earned on its undeclared accounts between 2000 and 2010. Finally, HSBC Switzerland agreed to pay a penalty of $59,900,000. This penalty amount takes into consideration that HSBC Switzerland self-reported its conduct, conducted a thorough internal investigation, provided client identifying information to the Tax Division, and extensively cooperated in a series of investigations and prosecutions, as well as implemented remedial measures to protect against the use of its services for tax evasion in the future.

According to court documents filed as part of the DPA, the bank assisted U.S. clients in concealing their offshore assets and income from U.S. taxing authorities. To conceal its clients' assets and income from the IRS, HSBC Switzerland employed a variety of methods, including relying on Swiss bank secrecy to prevent disclosure to U.S. authorities, using code-name and numbered accounts and hold-mail agreements, and maintaining accounts in the names of nominee entities established in tax haven jurisdictions, such as the British Virgin Islands, Liechtenstein, and Panama, that concealed the client's beneficial ownership of the accounts.

In an effort to attract new U.S. clients, and maintain existing relationships with U.S. clients, HSBC Switzerland bankers took trips to the United States. Between 2005 and 2007, at least four HSBC Switzerland bankers traveled to the United States to meet at least 25 different clients. One banker also attended Design Miami, a major annual arts and design event in Miami, Florida, in an effort to recruit new U.S. clients to open undeclared accounts with HSBC Switzerland.

In early 2008, in response to a public U.S. criminal investigation into UBS AG, the largest bank in Switzerland, for tax and securities violations in connection with its maintaining undeclared accounts for U.S. clients, HSBC Switzerland began a series of policy changes to restrict its cross-border business with U.S. persons, but the bank did not immediately cease that business. In fact, some HSBC Switzerland bankers assisted clients in closing their accounts in a manner that continued to conceal their offshore assets, such as withdrawing the contents of their accounts in cash.

Acting Deputy Assistant Attorney General Goldberg, U.S. Attorney Fajardo Orshan, and Chief Fort commended special agents of IRS-Criminal Investigation, who investigated this case, as well as Senior Litigation Counsel Mark F. Daly, Assistant Chief Jason H. Poole, and Trial Attorney Grace E. Albinson of the Tax Division, who prosecuted this case. Acting Deputy Assistant Attorney General Goldberg also thanked Assistant U.S. Attorneys Thomas P. Lanigan and Danielle N. Croke of the Southern District of Florida, Assistant U.S. Attorney Gordon Kromberg of the Eastern District of Virginia, and agents with the U.S. Postal Service for their assistance in this case.

Topic(s):
Financial Fraud
Tax

Component(s):
Tax Division
USAO - Florida, Southern

Press Release Number:
19-1368

https://www.justice.gov/opa/pr/justice-department-announces-deferred-prosecution-agreement-hsbc-private-bank-suisse-sa

[Emphasis, by underlining and by using bold letters, supplied by us]

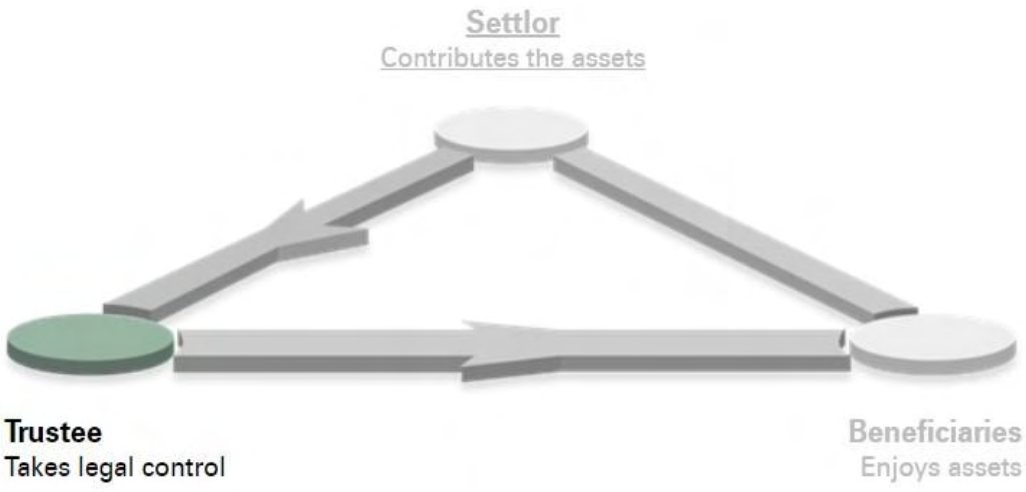
26. As we refer to the above press reports, this is just to set the backdrop in which the present case is set out, and, as we go along, we will see relevance of this backdrop.

B: Trust structures employed by HSBC Private Bank

27. Since a lot has been said about the assessee being a discretionary beneficiary of a trsut which is said to have the account with HSBC Private Bank (Suisse) SA Geneva, it may also be of some use to understand the nature of trust services offered by HSBC Private Bank, as stated on their website even today. Some of the relevant extracts are as follows:

Why consider trust and fiduciary services?

Trusts, foundations and other wealth structures help manage complex family wealth scenarios. They help to protect your family business and manage your wealth privately and independently, whilst providing continuity, preserving capital and helping family members enjoy financial benefits across generations.



Our trusts and other solutions are designed to suit your particular needs and ambitions, giving you a global structure for managing your wealth.

Choosing a trustee

Determining who will administer your structure is as important as your succession plan and the decision to create the structure itself. Trustees ultimately accept personal responsibility and legal liability for the financial

welfare of the trust fund, so selecting a responsible trustee to protect, manage and distribute the assets is a key decision that will have lasting implications.

It is essential to have a trustee with professional legal knowledge and financial expertise, as the set up may involve generations of work, detailed record-keeping and co-ordination with lawyers, accountants and other advisers. Trusts and other structures involve complex management, in addition to often challenging financial and investment decisions.

Basics of a trust

A trust is a private arrangement **whereby you, as the settlor, transfer the legal ownership of your assets (which then become the trust assets) to the trustee, who manages and holds the assets for the benefit of the beneficiaries. The beneficiaries may include you and your family**.

The benefits of using Private Wealth Solutions

HSBC Private Wealth Solutions is one of the leading international private client trust businesses, with a history of more than 70 years.

Our team is based across the globe and includes accountants, lawyers, bankers and trust specialists, whose skills and experience form the basis of the service we provide. These capabilities will help you develop and implement solutions that comply fully with all legal and regulatory requirements.

We offer a full range of solutions and can hold a wide range of assets, within structures that are often designed to span generations of one family.

While we are proud to be part of one of the most strongly capitalised banks in the world, we are happy to work with your preferred advisers and managers (and with other private banks).

https://www.hsbcprivatebank.com/en/plan/wealth-planning/trust-administration

28. What is essentially implies that so far as the trust structures are concerned, it is a structure, to use the words of the HSBC Private Bank- parent company of the HSBC Private Bank (Suisse) SA Geneva, "whereby you, as the settlor, **transfer the legal ownership of your assets (which then become the trust assets) to the trustee, who manages and holds the assets for the benefit of the beneficiaries**. The beneficiaries may include you and your family". The legal owner of the assets in a trust situation, even going by the HSBC Bank- as indeed a common knowledge, is a trustee in a fiduciary capacity and not the one who *de facto* owns the trust monies. It is also important to note that these trustees are sometimes provided by the HSBC Private Bank itself as the HSBC Private Bank takes pride in stating that their "**team is based across the globe and includes** accountants, lawyers, bankers and **trust specialists, whose skills and experience form the basis of the service we provide**". It is also a common knowledge that trustees are often corporate entities based in the jurisdictions in which secrecy laws are very strict.

B: The asesseee's conduct- Running with the hare and hunting with the hounds:

29. We must, at this stage, take note of the fact that the assessee had, in response to a specific request from the Assessing Officer, declined to sign 'consent waiver' so as to enable the income tax department to obtain all the necessary details from the HSBC Private Bank (Suisse) SA, Geneva. This aspect of the matter is clear from the extracts from the assessee's submissions dated 25th February 2015 filed by the Assessing Officer, a copy of which is placed at pages 47 (@ p 48) onwards in the paper-book filed by the assessee, as follows:

> ……..we would like to submit that the letter from HSBC Private Bank dated 5th January 2015 categorically states that the assessee does not have any account in HSBC Private Bank (Suisse) SA in Switzerland, hence question of providing you with CD of HSBC Bank account statement does not arise. Also, **the question of signing the consent waiver does not arise** as the assessee does not have any account in HSBC Private Bank (Suisse) SA…….
>
> *[Emphasis, by underlining, supplied by us now]*

30. The net effect of not signing the consent waiver form is that the Assessing Officer is deprived of the opportunity to seek relevant information from the bank in respect of assessee's bank account. If she had nothing to hide, there was no reason for not signing the consent waiver form. All that the consent waiver form does is waive any objection to the furnishing of information relating to assessee's bank account, i.e. HSBC Private Bank (Suisse) SA Geneva in this case. It is necessary to take note of the above position so as to understand that the assessee has not come with clean hands, and, quite to the contrary, the assessee has made conscious efforts to scuttle income tax department's endeavours to get at the truth.

31. For the sake of completeness, we may add that a consent waiver states, on a document titled 'Privileged and Confidential' addressed by the assessee to the HSBC Private Bank (Suisse) SA in respect of account(s) held by the said bank, *inter alia*, that:

> **I/We hereby declare and confirm that I am/we are cooperating with the income tax department, Government of India. In connection with our cooperation, I am/We are providing this waiver to the Income Tax Department, Government of India.**
>
> **I/We hereby instruct and authorise HSBC Private Bank (Suisse) SA to provide to me any and all documents in HSBC Private Bank (Suisse) SA's possession relating to the above accounts. With this instruction, I/we waive all protections under the data protection privacy and/ or bank secrecy laws of Switzerland.**
>
> **I/We understand that "accounts records" encompass all documents that a customer is entitled to, including**
>
> - **documents identifying the account holder, the beneficial owner, and/ or authorised persons;**
> - **documents pertaining to foreign entities established or operated on behalf of the Indian taxpayer;**
> - **account opening documents;**
> - **correspondence between the bank and customer and/or beneficiary and other persons in relation to the account;**

- **account statement and statement of assets;**

32. Clearly, therefore, the consent waiver being furnished by the assessee does not put the assessee to any disadvantage so far as getting at the actual truth is concerned. Of course, when the monies so kept in such banks abroad are legal or the allegations incorrect, the assessee can always, and many a cases assesses do, cooperate the investigations by giving the consent waivers.

33. The case before us, however, is in the category of cases in which consent waiver has been emphatically declined by the assessee, and thus deeper probe by the income tax department have been successfully scuttled.

C: Hon'ble Bombay High Court on the assessee's declining such consent waivers:

34. While on this aspect of the matter, it may also be useful to refer to a judgment of Hon'ble jurisdictional High Court on materially similar facts, wherein Their Lordships has disapproved and deprecated the conduct of the assessee in not signing the consent waiver form, in the judgment reported as **Soignee R Kothari Vs DCIT [(2016) 386 ITR 466 (Bom)]**. That was also a case in which the assessee, originally a resident in India, had migrated to the USA. The information by way of a 'base note' was received from the French Government, under the DTAA mechanism- as in this case, about existence of her bank account with the same bank, i.e. HSBC Private Bank (Suisse) SA, Geneva. In this case, around US $ 45 million were found to in the said bank account around the same time i.e. 2006, and assessee was one of the beneficiaries therein. It was in this backdrop that the assessment was sought to be reopened which was challenged in the writ petition before Hon'ble Bombay High Court. During the course of hearing of the writ petition, one of the argument advanced by the learned Additional Solicitor General, opposing the writ petition, was that Hon'ble High Court "**should not exercise its writ jurisdiction in favour of the petitioner as she has failed to sign the Consent Waiver Form**". When the assessee was asked to clarify this position, as noted by Their Lordships, "**On instructions of the Petitioner, the Learned Senior Counsel Mr. Pardiwalla informed us that her Uncle Mr. Dilip Mehta i.e the Executor of the Estate of late Mr. Ramniklal N Mehta was also willing to sign a modified consent waiver form. Thus both the Petitioner and her uncle agreed to give a modified Consent Waiver Form in effect disputing being either the beneficiary or being the person who has authority to operate the account"** but, as noted by Their Lordships, **"on enquiry by the Revenue from HSBC, Geneva, it was learnt that a modified Consent Waiver Form would not enable the bank to give copies of the bank statement of A/c. No. 5091404580 since the Waiver would have to be provided without modifications".** Their Lordships then noted that neither the assessee has furnished the requisite information nor allowed the authorities to collect the information by giving unqualified consent waiver forms, and added that **"In the normal course of human conduct if a person has nothing to hide and serious allegations /questions are being raised about the funds a person would make available the documents which would put to rest all questions which seem to arise in the mind of the Authorities. The conduct on the part of the Petitioner and her uncle, in not being forthcoming, to our mind leads us to the conclusion that this is not a fit case where we should exercise our extra ordinary writ jurisdiction and/or interfere with the orders passed by the authorities under the Act. If a person has nothing to hide, we believe the person would have co-operated in obtaining the Bank Statements".** Quite interestingly, in this case, when all these things came out in the open, the petitioner sought leave to withdraw the petition, but even that prayer was rejected

by observing that, **"It may be pointed out that just before giving our reasoned order, Mr. Nitesh Joshi, the learned Counsel appearing for the Petitioner sought permission to withdraw this Petition. We declined. This is particularly, so as after having taken up substantial time of the Court and only after we expressed our final view that we are dismissing the Petition, an attempt is made to withdraw the petition. This cannot be permitted".** That was a case in which even after the assessee was willing to sign a modified consent waiver form, Their Lordship disapproved the conduct of the assessee in no uncertain terms. Here is a case, in which the assessee has declined to sign the consent waiver form outright, and taken a stand that the question of signing the consent waiver form does not arise. Neither such a conduct can be appreciated, nor anyone with such a conduct merits any leniency.

35. On the one hand thus, the assessee has not cooperated with the income tax authorities in obtaining the relevant information from HSBC Private Bank (Suisse) SA, Geneva, or rather obstructed the flow of full, complete and correct information from the said bank by not waiving her rights to protect privacy for transactions with the bank, and, on the other hand, the assessee has complained that the income tax authorities have not been able to find relevant information. Obviously, these things cannot go together.

D: Justification for adverse inferences when consent waivers are declined:

36. It is thus clear that when an assessee declines to give consent waivers about a bank information being collected, the assessee effectively stalls further investigation about the same. Declining consent waiver is, for all practical purposes, enforcing the right of privacy, and enforcing the right to privacy, in the course of an income tax investigation about a transaction, stalling obtaining full, complete and correct information about the same. The presumption thus has to be that such information, as in possession of the income tax department and in respect of which the assessee has declined 'consent waiver' for further probe, is correct, and that the assessee is consciously trying to stall further probe in the matter so as to prevent further information, prejudicial to the interests of the assessee, coming to the light. When an assessee seeks protection on account of the position that the income tax department has not conclusively proved the things against the assessee, the assessee also has to show that he contributed to the efforts for getting at the truth or at least that he did not stall the efforts of the income tax department to get at the truth. By not signing the consent waiver, the assessee ends up protecting the actual facts coming to the lights by enforcing his own privacy under the Swiss secrecy and data protection laws, and, therefore, he cannot claim protection of the position that the income tax department has not conclusively established the alleged facts. In such circumstances, in our humble understanding, the Assessing Officer has no choice but to draw an adverse inference. Of course, all the evidences furnished by the assessee are to be considered nevertheless, but, when such evidences turn out to be unreliable, inconclusive or insufficient, in our considered view, even adverse inference could indeed be justified.

E: The base note received about the assessee account with HSBC Private Bank (Suisse) SA, Geneva

37. Let us, in this light, look at the base note containing information received in respect of the assessee.

38. This note, titled "synthèse individuelle" (individual synthesis, in literal meaning, which refers to 'individual's profile') BUP , inter alia, sets out the following information:

Nom *(name)*	:	**Tharani**
Prénoms *(first name)*	:	**Renu Tikamdas**
Nationalité *(Nationality)*	:	**INDIA**
Date de naissance *(date of birth)*	:	**10-05-1934**
Sexe *(sex)*	:	**F**
Lieu de naissance *(place of birth)*	:	**Hyderabad/ Pakistan**

Adresses de la personne physique
(Addresses of the natural person)

Mrs Renu Tikamdas Tharani
1, Prabhat, 28, B Road, Churchgate
Mumbai 400 020 (Legal address)

Profils client lies a la personne
(Customer profiles linked to the person)

Nom du profil client *(customer profile name)*	:	**GWU Investments Limited**
Code profil client *(customer profile code)*	:	**5091414771**
Date création du proifil *(creation date of profile)*	:	**26-07-2004**
Date de clôture du profil *(closure date of profile)*	:	**non référence** *(no reference)*
Statut de profil *(profile status)*	:	**Actif** *(Active)*
nature de profil (profile nature)	:	**Nominatif** *(nominative, or nominal)*
Type de client *(Profile type)*	;	**société domiciliée** *(domiciled company)*
Lien personne/ profil client *(Person / customer profile link)*	:	**Beneficial owner**
Détails du lien *(link details)*	;	**BENEFICIAL OWNERSHIP/ BENEFICIARY**
Info Signatures *(Signature Information)*	:	**non référence** *(no reference)*
Correspondance *(Correspondence)*	:	**envoyée au client** *(sent to client)*

……..

…….

personnes légales liées *(related legal persons)*		
nom-structure juridique (code BUP) *(name- legal structure)*	:	**THE THARANI FAMILY SETTLEMENT (5090278408)**
lieu de domiciliation *(place of domicile)*	:	**non référence** (No reference)
date de creation (creation date)	*:*	**non référence** (No reference)
Date de cloture *(closure date)*	*:*	**non référence** (No reference)
Adresses *(Address)*	:	**non référence** (No reference)

[The information given above in italics, in the smaller font size, is English translation of text- as obtained through google translation tool]

F: The factual position emerging in the light of the foregoing position, and our consideration to the stand of the assessee

39. The above base note also, under the heading '**autres personnes liés aux profils clients'**, information about "other people linked to customer profiles" which includes information about two other family trusts, namely 'Visions for the future' and 'The Children Hope Foundation', and HSBC International Trustees Limited, Cayman Islands branch, as also some other individuals- apparently family members. However, one common thread in all these seven persons linked to the customer profile, is GWU Investments Limited, as "**profil clients concernés**" (i.e. relevant customer profile).

40. It is an interesting coincidence, coincidence if it is, that within a short time of the information about the above account coming to the possession of the Government of India, this account was closed. Whatever assets were being held in this bank account were thus transferred back to GWU Investments Limited, a company based in Cayman Islands- a tax haven where it is almost impossible to find out about beneficial owners of a corporate entity, as it is not having "a regular system of monitoring of compliance with ownership and identity information keeping requirements in respect of companies and partnerships", as very mildly put in a peer review report- as stated in Rahul Navin's "Information Exchange and Tax Transparency: Tackling Global Tax Evasion and Avoidance" (ISBN-10: 9350358891).

41. It must also be a coincidence, coincidence if it could be, that the process of covering the tracks did not stop with closure of the HSBC account. It is a further coincidence that even the GWU Investments Limited, after the disclosure in respect of account, was closed as its name is struck off from the records of Registrar of Companies, Cayman Islands. As a Cayman Islands Government notification, available in public domain at http://www.gov.ky/portal/pls/portal/docs/1/11574085.PDF, shows at page 45 of 102, GWU Investments Limited no longer exists in the records of the Government of Cayman Islands.

42. Interestingly, however, even this trust stands terminated and nothing is now known about the trust. We have noted that the assessee has taken a plea that she has nothing to do with the funds in the HSBC Private Bank (Suisse) SA account, as she was only a beneficiary of the Tharani Family Settlement Trust. The assessee is at least, by her own admission, a beneficiary of the trust but she is not in a position to throw any light about the trust or enlighten anyone about the trust structure. All she has submitted is that GWU Investments Limited is the company that runs the trust and she has no idea as to where the monies came in the possession of GWU Investments Ltd. In letter dated 7th March 2015, a copy of which is placed before us at pages 57-58 of the paper-book also, the submissions of the assessee was as follows:

> With reference to your query on the date of last hearing held on 26th February 2015, wherein you wanted to know the following facts:
>
> (1) Who is settlor of Tharani Family Trust, and
> (2) What are the sources of funds which are deposited in GWU Investments Ltd
>
> To this, we would like to reiterate the fact that the assessee is neither a shareholder nor a director in GWU Investments Limited, which is an underlying company of Tharani Family Trust. Hence, the assessee is in no position to give you the details as to what are the sources of funds which are deposited in GWU Investments Ltd. Furthermore, she is also not signatory to the above said account belonging to GWU Investments bearing number 1414771. In the light of the above said facts, she is unable to provide you the above said details.
>
> Moreover, the assessee is neither the settler nor a trustee of Tharani Family Trust, she is just a discretionary beneficiary of the above trust, wherein she has not received any assets or funds at the time of disbursement. She does not have any knowledge as to who is settlor of the trust. Finally, the trust has now been terminated, hence it will not be possible for us to obtain any information about the trust. We now enclose herewith letter from HSBC Private Bank (Suisse) SA dated 26/02/2015 which confirms the above said facts.
>
> In light of the above said facts, GWU Investments Ltd is a completely separate distinct entity in the eyes of law, and hence, under no circumstances, can anyone treat the bank account in the name of GWU Investments Ltd as the bank account of the assessee and thereby tax the deposits in her hand. In light of the above said facts, the return of income filed by the assessee is correct, and hence there is no reason for making any addition to the returned income.
>
> With this, we have submitted you all the details called for.

42. To put a question to ourselves, is it an explanation which can be accepted by any reasonable person?

43. Let us also not lose sight of the fact, as we have noted earlier, that HSBC Private Bank even today publicly offers assistance, in trust structures, whereby you, as the settlor, **transfer the legal ownership of your assets (which then become the trust assets) to the trustee, who manages and holds the assets for the benefit of the beneficiaries**, **and the**

beneficiaries may include you and your family". It is also proudly stated on the bank website itself that their "**team is based across the globe and includes**…….**trust specialists, whose skills and experience form the basis of the service we provide**". We have also seen as to how the HSBC Private Bank (Suisse) SA has been indicted by several Governments worldwide and how it has even confessed to be being involved in money laundering.

44. The assessee states that she is neither a shareholder nor a director in GWU Investments Ltd. That's not even in dispute. GWU Investments Ltd is a Cayman Islands entity, and it needs no special knowledge to know that, more as a rule rather than as an exception, the Cayman Island entities are owned by nominees of the beneficial owners. The operations carried out by these entities, are mainly to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These offshore entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these ground realities. Nothing, therefore, really turns on the assessee not being a director or shareholder of the GWU Investments Ltd. The relevant question is whether she is beneficial owner of the said company or not. HSBC documents show that she is the beneficial owner, and there is nothing, save and except for self-serving statements of the assessee and contents of some unverified and uncorroborated letter of functionary of HSBC Private Bank- which has been indicted in several parts of the world for colluding with unscrupulous tax evaders and money launderers, to controvert that position. It is also inconceivable that a Rs 200 crore beneficiary in a trust will not know about who has settled that trust. Similarly, while dealing with Cayman Island entities, living in denial about beneficial ownerships, and confining to legal ownerships, is preposterous. The claim of the assessee, about a thing which is not in the knowledge of the Assessing Officer and further investigations about which are stalled by the assessee, is to be examined in the light of real life probabilities and the very act of the assessee, in stalling the further probe, works against the assessee. The assessee may have something to say and some evidences to file. These evidences and statements cannot always be accepted at the face value without application of mind about their reliability. A conscious call is to be taken, in a fair and objective but a realistic, manner about reliability of such evidence. As observed by Hon'ble Supreme Court, in the case **of CIT Vs Durga Prasad More [(1971) 82 ITR 540 (SC)]**, "**Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities**". As Hon'ble Supreme Court has observed, in this case, "..**it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents**". As a final fact finding authority, this Tribunal cannot be superficial in its assessment of genuineness of a transaction, and our call is to be taken not only in the light of the face value of the documents sighted by the assessee but also in the light of all the

surrounding circumstances, preponderance of human probabilities and ground realties. There may be difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the fact finding authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidences. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "**human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law**". This faith in the Tribunal by Hon'ble Courts above makes the job of the Tribunal even more onerous and demanding and, in our considered view, it does require the Tribunal to take a holistic view of the matter, in the light of surrounding circumstances, preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order, statements and letters and examining them, in a pedantic manner, with the blinkers on. The same has been the approach adopted by Hon'ble Supreme Court, in the case of **Sumati Dayal Vs CIT [(1995) 214 ITR 801 (SC)],** wherein Their Lordships have, inter alia, disapproved acceptance of a claim of winning the appellant claims to have won in horse races a total amount of Rs. 3,11,831 on 13 occasions out of which 10 winnings were from Jackpots and 3 were from Treble events by Chairman of the Income Tax Settlement Commission, and observed that "**This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities**". Their Lordships further observed that "**Similarly the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the alleger to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence**".

45. Viewed in the light of factual backdrop of the case, and in the light of the above legal position, no reasonable person can accept the explanation of the assessee. The assessee is not a public personality like Mother Terresa that some unknown person, with complete anonymity, will settle a trust to give her US $ 4 million, and in any case, Cayman Islands is not known for philanthropists operating from there; if Cayman Islands is known for anything relevant, it is known for an atmosphere conducive to hiding unaccounted wealth and money laundering, and that does not advance the case of the assessee. This is a jurisdiction which has double the number of companies than resident, most of which remain only on paper, and it will be no naïve to believe that these companies are located here, in a country with around 65,000 residents, for bonafide core activities, rather than the benefits of anonymity, secrecy and liberal tax laws. Cayman Island is one of the few jurisdictions in the world where public records of the beneficiaries of firms and companies, like GWU Investments Ltd, are not maintained, and it is only with effect from 2023, that is if the promises made by the Government of Cayman Islands can be believed at face value, that such public records will be maintained. That is an ideal situation, as on now, for holding the unaccounted monies

through a web of proxy corporate entities. The only persons who are privy to vital information about these transactions are the persons who are privy to these transactions- maybe as owner, as settlor, as beneficiaries or as facilitators or even as accomplices in these manoeuvrings, and when they decline to share the correct information, and thwart further probe in the matter, investigations reach *a cul-de-sac*. The assessee before us is closely involved with the transaction and it is unconceivable that the assessee will have no direct knowledge of the owners of the underlying company and settlors of the trust which has her, as she herself puts it, as beneficiary of such a huge amount. This inference is all the more justified when we take into account the fact that the assessee has been non-cooperative and has declined to sign the consent waiver. One of the arguments raised by the assessee, as set out in a chart showing arguments of the assessee- below paragraph 20 earlier in this order, that the assessee could not have performed the impossible act of signing consent waiver because she was not owner of the account is too naïve and frivolous to be even taken seriously. If the assessee was indeed not the owner of the account, there was all the more reason to sign the consent waiver form because it would have established that fact when the HSBC Private Bank (Suisse) Geneva was to decline the information on the basis of that consent waiver. A consent waiver signed by the assessee would have been infructuous in that case, and it could not have done any harm to the assessee. Consent waiver form does not prejudice the claim of the assessee that he does not own the account in question; all it does is, as can be seen from the extracts from consent waiver form format reproduced earlier, is that it waiver assessee's rights, if any, under the data protection and banking secrecy laws. The plea of the assessee, as noted earlier, is fit, if at all it is fit for anything, only to be rejected. It is only elementary that direct evidence of illegal transactions of the assessee, as indicated by Hon'ble Supreme Court in the case of Sumati Dayal *(supra)*, "**would be rarely available**" as such transactions "**take place in secret",** and therefore, simply on the ground that such direct evidence is not brought on record by the revenue authorities, the assessee cannot go scot free**.** As observed by Hon'ble Supreme Court in the said case, **"it is upon the alleger to prove that it is so, ignores the reality".** When we follow the path, as laid down by Hon'ble Supreme Court in the case of Sumati Dayal *(supra),* by "**considering surrounding circumstances and applying the test of human probabilities"** and donot take **"a superficial approach to the problem",** the inescapable conclusion is that the explanation of the assessee is only fit to be rejected. In the present case, there is even direct evidence available on record. As the base note categorically states, this is "**synthèse individuelle**" (individual synthesis, in literal meaning, which refers to 'individual's profile') and name of the person is Renu Tikamdas Tharani, and her address is under the heading "**Adresses de la personne physique"** (i.e. addresses of the natural person). In the heading "**Profils client lies a la personne**" (i.e. customer profiles linked to the person), GWU Investments Limited is shown as **Nom du profil client** (customer profile name) but then the same note shows **nature de profil** (i.e. profile nature) as **Nominatif** (nominative, or nominal) and that the **Détails du lien (i.e. link details)** between the individual and the company is that of **"beneficiary/ beneficial ownership"**. It is important to note that the reference to "link details" is in respect of customer profile name, which is stated to be GWU Investments Limited, and only an individual can be beneficiary of the company or beneficial owner of the company, and not the other way round. There is no reference to Tharani Family Trust at this stage and in this section of the base note. That comes at the fag end of the base note under the heading "**personnes légales liées"** (i.e. related legal persons). Clearly, therefore, the link details, or **"détails du lien"**, are between the individual and GWU Investments Limited, and these link details clearly show that the assessee is a beneficiary and beneficial owner of the GWU Investments Ltd.

46. While we have noted the claim of the assessee that she is a discretionary beneficiary of Tharani Family Trust, that fact does not find mention in the base note. As we have clearly analyzed above, the base note shows that the assessee was beneficial owner or beneficiary of GWU Investments Ltd. We may add that in the remand report filed by the Assessing Officer, there is a reference to some unsigned draft copy of the trust deed having been filed before him but neither this deed is authentic nor is it placed before us in the paper-book. The assessee has not submitted the trust deed or any related papers but merely referred to a somewhat tentative claim made in a letter between one Mahesh Tharani, apparently a relative of the assessee and the HSBC Private Bank (Suisse) SA- an organization with a globally established track record of hoodwinking tax authorities worldwide. All that this letter, addressed to one Mahesh Tharani, states is "**As per the request of director, we hereby confirm that, GWU Investments Ltd was holder of the account 1414771. According to our records GWU Investments Ltd. Used to be an underlying company of the Tharani Family Trust for which Mrs. Renu Tharani was a discretionary beneficiary. To the best of our knowledge, The Tharani Family Trust was terminated and none of the assets deposited with HSBC Private Bank (Suisse) SA were distributed to Mrs. Renu Tharani**". It is not clear as to how is the director, and of which company; if Mahesh Tharani was a director of GWU Investments Ltd, when he could share this letter, he could have as well shared the information. If he is not the director, he would have at least known the director because director requested the Bank to provide this information to Tharani. Nothing is clear, nor does the assessee throw any light on the same. Be that as it may, this letter does not show deny, nor show any material to controvert, what is stated in the base note i.e. GWU Investments Ltd and the assessee are linked as beneficial owner. There is no dispute that account was in the nominal name of GSW Investments Ltd but the question is who is the natural person beneficial owner thereof. As for the Trust, there is no corroborative evidence about the statement, but nothing turns thereon as well. The assessee being discretionary beneficiary owner of the trust, and beneficial owner of the underlying company, is not mutually exclusive anyway but the claim of the assessee being a discretionary beneficiary of the trust is without even minimal evidence. There is another letter from HSBC Private Bank (Suisse) SA to the assessee which states that **"Further to your request, we hereby confirm that you, Mrs Renu Tharani, are not the holder nor, to the best of our knowledge, the beneficial owner of any account opened in the books of HSBC Private Bank (Suisse) SA. However, you are a discretionary beneficiary of a trust called the Tharani family Trust for which HSBC Guyerzeller Trust Company, acts as trustee. No bank account is maintained in the name of the trustee, and we confirm that you are not, nor have your even been, an authorized signatory on the bank account held in the name of the trust's underlying company".** As for the first statement made in this letter, it does not show why the base note records assessee as the beneficial owner of the company, and how does the bank reconcile these two conflicting positions taken. As regards the assessee being a discretionary beneficiary, nothing turns on it anyway for the reasons we have discussed earlier in this paragraph. As for assessee not being authorised signatory for GWU Investments Ltd, that is not even the case of the assessee or the position taken in the base note. An HSBC entity, i.e, HSBC Guyerzeller Trust Company, being a trustee for Tharani Family Trust shows that if it was indeed desired by the assessee, trust deed would have been available with the HSBC entity. It's a also a coincidence that with all this available information, neither the assessee asks for the trust deed nor does the HSBC share the same. On the contrary, assessee, in one of the communications to the Assessing Officer, specifically states her inability to furnish the same. What these letters state may have some truth- half truth or technical truth, but then these qualified truths are only different forms of falsehood in entirety. There is something seriously amiss in all this; something is rotten in the State of

Denmark. There is a series of coincidences, right from the HSBC account being closed after the information contained in the base note coming out and to the underlying company being removed from the name of Register of Companies in Cayman Island, right from assessee living in complete denial about any knowledge about a HSBC Private Bank (Suisse) SA account in her name to her lack of information about the company which is holding US $ 4 million for her, and, despite assessee being purportedly so clean in her affairs, her thwarting any efforts of the income tax department to get at the truth by declining to sign the consent waiver form. It is wholly un-understandable as to how can assessee, on one hand, seek to treat a cleverly worded private letter from HSBC Private Bank (Suisse) SA as gospel truth, and, on the other hand, effectively stall, by declining consent waiver and by stating half truths- even if her statements have an element of truth, the Assessing Officer obtaining direct information from the same organization. There is no meeting ground in this approach. In any case, for the reasons set out above and as evident from the base note, the assessee is beneficial owner of GWU Investments Ltd, Cayman Islands. There is nothing to controvert this fact stated in the base note, and since the assessee has declined consent waiver in this case, the assessee cannot decline correctness of the details obtained from the HSBC Private Bank (Suisse) SA.

47. As regards the repeated references to Hon'ble Supreme Court's judgment in the case of **Estate of HMM Vikramsinhji of Gonda** *(supra),* it is important to understand that it was a case in which a discretionary trust was settled by the assessee and the limited question for adjudication was taxability of income of the trust, after the death of the settlor and in the hands of the beneficiary. It was in this context that Hon'ble Supreme Court held that the question of taxation in the hands of the beneficiary arises only when he receives the money because, as Their Lordships noted, "**A discretionary trust is one which gives a beneficiary no right to any part of the income of the trust property, but vests in the trustees a discretionary power to pay him, or apply for his benefit, such part of the income as they think fit. The trustees must exercise their discretion as and when the income becomes available, but if they fail to distribute in due time, the power is not extinguished so that they can distribute later. They have no power to bind themselves for the future. The beneficiary thus has no more than a hope that the discretion will be exercised in his favour**." These observations have no relevance in the present context. Firstly, neither there is any trust deed before us, nor the question before us pertains to taxability of income of the trust. Secondly, beyond a mention in the base note as a **personnes légales liées"** (i.e. related legal persons), there is no evidence even about existence, leave aside nature, of the trust. Thirdly, the point of taxability here is beneficial ownership of GWU Investments Ltd, a Cayman Island based company, by the assessee. Finally, even if there is a dispute about the alleged trust, the dispute is with respect of taxability of funds found with the trust and the source thereof. Clearly, therefore, the issue adjudicated upon in the said decision has no relevance in the present context. The very reliance on the said decision presupposes that the assessee was discretionary beneficiary *simplicitor* of a discretionary family trust, and nothing more- an assumption which is far from established on the facts of this case.

48. As regards the question of income which can be brought to tax in the hands of the assessee being a non-resident and certain errors in computations on account of duplicity of entries etc, we have noted that the learned CIT(A) has given certain directions which we have reproduced below paragraph 18 of this order, and neither these directions are challenged nor any infirmities are shown therein. Obviously, therefore, there is no occasion, or even prayer, for interference in the same.

49. As we part with the matter, we have a couple of observations to make. The first observation is that we must add that though the hearing in this case was concluded on 28th January 2020, in view of Covid-19 lockdown in Mumbai city- which is, for all practical purposes, still continuing, with limited functionality of our office, the order is being pronouncement today on 16th July 2020. However, in the light of a coordinate bench decision in the case of **DCIT Vs JSW Limited,** *and vice versa* **[(2020) 116 taxmann.com 565 (Mum)]**, the period of lockdown is to be excluded in computation of 90 days period. As further noted in the said order, Hon'ble Bombay High Court has observed that "**while calculating the time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly**" and the said order continued to operate till 15th July 2020. Viewed thus, this order is being passed within the permissible time limit in terms of Hon'ble High Court's directions. The second point is that this decision cannot be an authority for the proposition that wherever name of the assessee figures in a base note from HSBC Private Bank (Suisse) SA Geneva, an addition will be justified in each case. The mere fact of an account in HSBC Private Bank (Suisse) SA Geneva, by itself, cannot mean that the monies in the account are unaccounted, illegitimate or illegal. The conduct of the assessee, actual facts of each case and the surrounding circumstances are to be examined, on merits, and then a call is to be taken about as to whether the explanation of the assessee merits acceptance or not. There cannot be a short cut and one size fits all approach to this exercise.

Our conclusions on correctness of addition of Rs 196.46 crores in relation to HSBC Private Bank (Suisse) SA, Geneva

50. In view of the above discussions, and for the detailed reasons set out above, we approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter. The impugned addition of Rs 196,46,79,146, in respect of assessee's account with HSBC Private Bank (Suisse) SA, Geneva, is thus confirmed.

Outcome of the appeal

51. In the result, the appeal is dismissed. Pronounced in the open court today on the 16th day of July, 2020.

Sd/-
Amarjit Singh
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 16th day of July, 2020

Copies to: *(1)* *The appellant* *(2)* *The respondent*
(3) *CIT* *(4)* *CIT(A)*
(5) *DR* *(6)* *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai